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In the Supreme Court of the United States

OCTOBER TERM, 1995

UNITED STATES OF AMERICA, PETITIONER

v.

FOUR HUNDRED AND FIVE THOUSAND, EIGHTY-NINE DOLLARS AND TWENTY-THREE CENTS ($405,089.23) IN UNITED STATES CURRENCY, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

Whether the Double Jeopardy Clause of the Fifth Amendment prohibits a civil proceeding for the *in rem* forfeiture of property alleged to be the proceeds of narcotics and money laundering activities where the owners of the property were also prosecuted for, and convicted of, narcotics and money laundering crimes.

PARTIES TO THE PROCEEDINGS

The petitioner is the United States of America. The respondents are Charles Wesley Arlt, James Wren, Payback Mines, and the property listed in the caption to the final judgment of forfeiture, App., *infra*, 75a-77a.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the United States of America, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-23a) is reported at 33 F.3d 1210. An order amending the opinion of the court of appeals (App., *infra*, 24a-29a) is reported at 56 F.3d 41, together with a dissent from the denial of rehearing en banc.

JURISDICTION

The judgment of the court of appeals was entered on September 6, 1994. A petition for rehearing was denied, and the opinion amended, on May 30, 1995.

App., *infra*, 24a-29a. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Double Jeopardy Clause of the Fifth Amendment to the Constitution provides: "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb." The provisions of 21 U.S.C. 841, 846 and 881 and 18 U.S.C. 371, 981 and 1956 are reproduced at App., *infra*, 112a-156a.

STATEMENT

1. On June 17, 1991, the government filed a civil complaint, pursuant to 21 U.S.C. 881(a)(6) and 18 U.S.C. 981(a)(1)(A), seeking forfeiture of bank account funds, cars, vessels, silver bars, and aircraft claimed by James Wren, Charles Arlt, and Payback Mines. That complaint was filed five days after Wren, Arlt, and others were charged in a superseding indictment with narcotics trafficking and money laundering, in violation of 21 U.S.C. 841, 846 and 18 U.S.C. 371 and 1956. Wren, Arlt, and Payback Mines filed claims to the property in the civil proceeding. By agreement of the parties, litigation of the forfeiture action was deferred during the pendency of the criminal prosecution. App., *infra*, 50a-52a.

On March 27, 1992, Wren and Arlt were convicted of conspiracy and substantive charges relating to methamphetamine manufacturing and of laundering drug proceeds through front corporations that included Payback Mines. The government then filed a motion for summary judgment in the civil forfeiture action, contending that the assets it sought to forfeit were the proceeds of illegal narcotics activity, under 21 U.S.C. 881(a)(6), and alternatively were "involved in," or "traceable to" properties involved in, money laundering activity, under 18 U.S.C. 981(a)(1)(A). The court granted the government's motion, finding all of the assets forfeitable under the proceeds theory and, alternatively, except for the silver bars, under the money laundering theory. App., *infra*, 53a-74a.

2. A panel of the Ninth Circuit reversed, holding that the forfeiture action was barred by Arlt's and Wren's criminal convictions, because forfeiture of the property violated the Double Jeopardy Clause's prohibition on imposing cumulative punishment for the same offense in two separate proceedings. App., *infra*, 1a-23a.[1] The panel first held that a criminal prosecution and a related, parallel civil forfeiture action constitute "separate" proceedings for double jeopardy

[1] The panel noted that the claimants failed to raise any double jeopardy defense in the district court, but excused their waiver because the government responded to the claim on the merits and because the claimants relied principally on this Court's intervening decision in *Austin* v. *United States*, 113 S. Ct. 2801 (1993). App., *infra*, 5a n.1. The panel did not consider it significant, in concluding that the government effectively waived the claimants' waiver, that the double jeopardy claim was presented in less than two pages of the claimants' *pro se* brief or that the government did not have an opportunity to speak to the question of waiver at oral argument, in light of the panel's unanimous conclusion that the case was unworthy of argument. *Id.* at 1a n.*. In addition, the panel did not explain why it sustained the double jeopardy plea of Payback Mines, a claimant that was not criminally prosecuted. Those fact-bound rulings do not warrant the Court's attention, and for that reason we do not independently present them as grounds for review.

purposes. *Id.* at 7a. That conclusion, the panel believed, was required by *Jeffers* v. *United States*, 432 U.S. 137 (1977), in which eight members of this Court assumed that two parallel criminal prosecutions can never be the "same proceeding" for double jeopardy purposes. App., *infra*, 10a-12a. The panel expressly rejected (*id.* at 7a-8a) the contrary conclusions of the Second and Eleventh Circuits, which have held that parallel civil and criminal cases can qualify as a single "proceeding" under the Double Jeopardy Clause. See *United States* v. *One Single Family Residence*, 13 F.3d 1493 (11th Cir. 1994); *United States* v. *Millan*, 2 F.3d 17 (2d Cir. 1993), cert. denied, 114 S. Ct. 922 (1994).

The panel next concluded that all actions brought under the federal civil forfeiture statutes impose "punishment" for double jeopardy purposes. The panel acknowledged that in *United States* v. *One Assortment of 89 Firearms*, 465 U.S. 354 (1984), this Court unanimously held that nothing in the Double Jeopardy Clause precluded the government from obtaining a civil forfeiture of firearms following a criminal prosecution of the owner for unlawfully dealing in the same firearms, because the civil forfeiture was "remedial." App., *infra*, 13a. The panel concluded, however, that this Court "changed its collective mind" (*ibid.*) five years later in a second unanimous decision, *United States* v. *Halper*, 490 U.S. 435 (1989), by holding that certain civil proceedings can impose "punishment" for double jeopardy purposes. That "change[] [of] * * * mind" (App., *infra*, 13a) was confirmed, in the panel's view, by *Austin* v. *United States*, 113 S. Ct. 2801 (1993), which held that civil forfeiture of property used to

further drug trafficking should be considered "punishment" for purposes of determining the threshold applicability of the Eighth Amendment's prohibition of excessive fines.

According to the panel, "the only fair reading" of *Austin* (App., *infra*, 15a) is that all civil forfeitures must be deemed "punishment," not only under the Eighth Amendment, but also under the Double Jeopardy Clause. Moreover, the panel concluded that *Austin* reflects a departure from *Halper*'s case-by-case treatment of "punishment" determinations, and instead adopted "a categorical approach" (App., *infra*, 17a) that looks "to the requirements of the forfeiture *statute* as a whole" (*ibid.*), rather than to the facts of the particular forfeiture. Applying that "categorical" analysis, the panel concluded that the statutory provisions governing forfeitures of drug proceeds impose "punishment" in all of their applications. The panel acknowledged (*id.* at 16a) that its conclusion that the forfeiture of drug proceeds is always punitive conflicts with *United States* v. *Tilley*, 18 F.3d 295 (5th Cir.), cert. denied, 115 S. Ct. 573, 574 (1994). Having concluded that the forfeiture action in this case imposed a second "punishment" in a separate proceeding, the panel reversed and remanded with instructions to dismiss the forfeiture action with prejudice.[2]

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[2] On December 1, 1994, the same panel of the Ninth Circuit reversed Arlt's conviction on the ground that he was improperly denied his right to self-representation, and remanded for a new trial. See *United States* v. *Arlt*, 41 F.3d 516. That decision did not affect Wren's conviction, the only other claimant who was criminally prosecuted. Wren's conviction was affirmed by the same panel in an unpublished order, but

3. The United States sought rehearing, and suggested rehearing en banc, contending that (1) the civil forfeiture of drug proceeds cannot be "punishment" for an "offense" within the meaning of the Double Jeopardy Clause, (2) if civil forfeiture is punishment for an "offense" for double jeopardy purposes, the "elements" test of *Blockburger* v. *United States*, 284 U.S. 299 (1932), requires the conclusion that it is not the "same" offense as the crimes for which the claimants were convicted, and (3) if the civil forfeiture is deemed to impose punishment for the same offense as the crimes for which the claimants were also punished, all punishment occurred in the "same proceeding" for double jeopardy purposes. The court requested responses to the petition, and accepted a brief in opposition to rehearing from the National Association of Criminal Defense Lawyers as *amicus curiae*.

After considering those submissions, the court denied rehearing and rehearing en banc. The panel, however, amended its opinion to note (App., *infra*, 25a) that its categorical approach was also "compelled" by *Department of Revenue of Montana* v. *Kurth Ranch*, 114 S. Ct. 1937 (1994), a case decided before the panel's decision, but not cited in its original opinion. The panel explained that *Kurth Ranch* "applied *Austin*'s categorical approach for determining when punishment has been imposed in a Double Jeopardy case arising pursuant to a statute that taxed drug monies." App., *infra*, 25a.

(on the government's cross-appeal) the panel vacated his sentence and remanded for resentencing. See *United States* v. *Wren*, No. 92-50467 (Dec. 1, 1994). Following the remand of Arlt's case, the government obtained a superseding indictment (against Arlt alone) naming the subject property in a new *in personam* forfeiture count, which will be tried with the other offenses for which Arlt has been ordered to stand trial. We do not believe the subsequent developments as to either Wren or Arlt affect the suitability of this case for further review. In the event forfeiture is ordered as a result of Arlt's new trial, it is doubtful, in light of the decision below, that such forfeiture could bind any other claimants. Cf. *Witte* v. *United States*, 115 S. Ct. 2199, 2204-2205 (1995).

Seven judges dissented from the denial of rehearing en banc. Writing for the seven dissenters, Judge Rymer stated that, by leaving the decision below unreviewed, the Ninth Circuit "let[] stand a decision that 'could free hundreds of drug dealers across the western United States,'" App., *infra*, 26a, since "[t]he flip side of the panel's reasoning is that a drug dealer whose illegally obtained proceeds have previously been seized may not thereafter be prosecuted because he will already have been 'punished.' This cannot be right." *Ibid.*

Judge Rymer argued that "[p]roceeds are the functional equivalent of contraband," the forfeiture of which "is a remedial sanction that does not constitute punishment for double jeopardy purposes" under *89 Firearms*. App., *infra*, 27a. She noted that "the panel's opinion writes *89 Firearms* off the books" by citing *Halper* and *Austin* "out of context and surmising that 'the Court changed its collective mind' * * * despite the fact that the Court itself didn't say that it had." *Ibid.* She also rejected the panel's view that *Kurth Ranch* should be read to support a "categorical" approach to the forfeiture of proceeds, noting that "*Kurth Ranch* was a double jeopardy case * * * that was decided after *Austin*, yet mentioned *Austin* only in passing and then only

as holding that a civil forfeiture may violate the Eighth Amendment's proscription against excessive fines." *Id.* at 29a n.3 (citing *Kurth Ranch*, 114 S. Ct. at 1945). Judge Rymer concluded that "[*i*]*f* the Supreme Court *has* changed its mind—if * * * separating a drug trafficker from the proceeds of his trafficking is *punishment* which either bars forfeiture after conviction or prosecution after seizure—it is up to that Court to say so." App., *infra*, 28a.

REASONS FOR GRANTING THE PETITION

This case presents three related and important issues under the Double Jeopardy Clause. First, the Ninth Circuit has erroneously held that *Halper*, *Austin*, and *Kurth Ranch* effectively overturned the settled understanding, unanimously reaffirmed by this Court a decade ago in *89 Firearms*, that a civil forfeiture action that serves a remedial purpose may follow a criminal prosecution for related conduct without offending the Double Jeopardy Clause. Second, the Ninth Circuit's holding that the civil forfeiture and criminal convictions inflicted punishment for "the same offense" cannot be reconciled with numerous decisions of this Court holding that whether two offenses are the "same" for double jeopardy purposes generally is governed by the "elements" test of *Blockburger*. Third, the Ninth Circuit erred in holding that parallel civil and criminal cases, if they are deemed to impose punishment for the same offenses, necessarily are "separate proceedings" for double jeopardy purposes. Those rulings, which the Ninth Circuit conceded are at odds with the conclusions of other courts of appeals, seriously threaten the ability of federal and state authorities to prosecute crimes and administer important civil forfeiture programs

within their respective jurisdictions. Further review is therefore warranted.

1. In *United States* v. *One Assortment of 89 Firearms*, 465 U.S. 354 (1984), this Court held that the Double Jeopardy Clause did not bar a civil *in rem* action to forfeit firearms "involved in or used or intended to be used in" violations of the Gun Control Act of 1968 following the owner's acquittal of related violations of that Act. 465 U.S. at 362-366. The Court concluded that, "[u]nless the forfeiture sanction was intended as punishment, so that the proceeding is essentially criminal in character, the Double Jeopardy Clause is not applicable." *Id.* at 362. The Court noted that Congress intended the forfeiture to be a civil remedy, that the forfeiture furthered the "broad remedial aims" of "discouraging unregulated commerce in firearms and * * * removing from circulation firearms that have been used or intended for use outside of regulated channels of commerce," and that accordingly the forfeiture served goals "plainly more remedial than punitive." *Id.* at 364. Because the claimant "failed to establish by the 'clearest proof' " that the forfeiture was in fact sufficiently punitive, the Court concluded that it was "not an additional penalty for the commission of a criminal act, but rather is a separate civil sanction, remedial in nature * * * [that was] not barred by the Double Jeopardy Clause." *Id.* at 366. See also *Various Items of Personal Property* v. *United States*, 282 U.S. 577, 581 (1931) ("The forfeiture is no part of the punishment for the criminal offense. The provision of the Fifth Amendment to the Constitution in respect of double jeopardy does not apply") (citation omitted).

The Ninth Circuit concluded that *89 Firearms* has effectively been written "off the books," App., *infra*, 27a (Rymer, J., dissenting from the denial of rehearing en banc), by this Court's decisions in *United States* v. *Halper*, 490 U.S. 435 (1989), *Austin* v. *United States*, 113 S. Ct. 2801 (1993), and *Department of Revenue of Montana* v. *Kurth Ranch*, 114 S. Ct. 1937 (1994). None of those cases purported to overrule *89 Firearms*, and none can be read to require the conclusion that the forfeiture of drug proceeds is inherently "punishment" for an "offense" under the Double Jeopardy Clause.

In *Halper*, the Court stated a rule for "the rare case" in which "a prolific but small-gauge offender [was subjected] to a sanction overwhelmingly disproportionate to the damages he has caused," so that the sanction though properly viewed as remedial in most of its applications could not so be viewed in the specific case. 490 U.S. at 449.[8] That ruling lends no support to the Ninth Circuit's conclusion that a civil forfeiture of the proceeds of drug activity—*i.e.*, the seizure of the ill-gotten profits from narcotics trafficking—must *always* be characterized as punitive. To the contrary, as the Fifth Circuit concluded in *United States* v. *Tilley*, 18 F.3d 295, cert. denied, 115 S. Ct. 573, 574 (1994), a case "with which [the opinion below is] squarely in conflict," App, *infra*, 28a (Rymer, J., dissenting from the denial of rehearing en banc), the forfeiture of drug proceeds is akin to the forfeiture of contraband or other illegal items; that action is thus clearly remedial:

> The possessor of proceeds from illegal drug sales never invested honest labor or other lawfully derived property to obtain the subsequently forfeited proceeds. Consequently, he has no reasonable expectation that the law will protect, condone, or even allow, his continued possession of such proceeds because they have their very genesis in illegal activity. * * * [T]he forfeiture of illegal proceeds, much like the confiscation of stolen money from a bank robber, merely places that party in the lawfully protected financial status quo that he enjoyed prior to launching his illegal scheme. This is not punishment "within the plain meaning of the word."

18 F.3d at 300 (quoting *Halper*, 490 U.S. at 449). Accord *SEC* v. *Bilzerian*, 29 F.3d 689, 696 (D.C. Cir. 1994) (disgorgement order following criminal conviction for violation of securities laws not a punishment but remedial only, as it requires defendant to give up only his ill-gotten gains and does not impose an additional penalty, citing *Tilley*); *United States* v. *Carson*, 52 F.3d 1173, 1182-1183 (2d Cir. 1995) (disgorgement order in civil RICO case not "punishment" for double jeopardy purposes, because "[d]isgorgement, by design, is compensatory").

Nothing in *Austin* changes that conclusion. In finding that the civil forfeiture provisions at issue in that case (21 U.S.C. 881(a)(4) and (7)) constituted punishment for purposes of the threshold applicability of the Eighth Amendment's Excessive Fines Clause, the Court distinguished two of its precedents concerning the forfeiture of contraband or

[8] *Halper* therefore stands for the proposition that, in "rare" cases, a person who has previously been convicted of a crime may oppose a civil remedy, otherwise permissible under the Double Jeopardy Clause, if the penalty sought is so vastly disproportionate to the harm caused by the defendant that, as applied to him, it cannot be explained other than as additional punishment for the crime.

goods involved in customs violations and noted that the forfeitures in both of those cases were remedial. 113 S. Ct. at 2811-2812 (citing *89 Firearms*, 465 U.S. at 364, and *One Lot Emerald Cut Stones* v. *United States*, 409 U.S. 232, 237 (1972) (per curiam) (forfeiture of undeclared imported merchandise prevents forbidden merchandise from circulating in the United States, and provides a reasonable form of liquidated damages)). The Court also cited the same cases in observing that "[t]he Double Jeopardy Clause has been held not to apply in civil forfeiture proceedings, but only in cases where the forfeiture could properly be characterized as remedial." *Austin*, 113 S. Ct. at 2805 n.4. This Court's action in citing and distinguishing those cases scarcely supports the Ninth Circuit's view that this Court has "changed its collective mind" (App., *infra*, 13a) about their continuing vitality.

Nor is the forfeiture of drug proceeds similar to the tax on possession of dangerous drugs, which the Court found was a punishment for double jeopardy purposes in *Kurth Ranch*, *supra*. The Court found it highly significant that the state statute that required payment of the tax conditioned liability on commission of a crime, and that the tax was due and collectable "only after the taxpayer ha[d] been arrested for the precise conduct that gives rise to the tax obligation in the first place." 114 S. Ct. at 1947. As the Court noted, "[p]ersons who ha[d] been arrested for possessing marijuana constitute[d] the entire class of taxpayers subject to the [state] tax." *Ibid.* In addition, the tax was an *in personam* sanction that was exacted after the drugs had been confiscated and destroyed, and that amounted to more than eight times the market value of the drugs. As

the Court put it, "[a] tax on 'possession' of goods that no longer exist and that the taxpayer never lawfully possessed has an unmistakable punitive character" especially when it is "imposed on criminals and no others." *Id.* at 1948. That type of assessment went far beyond merely stripping a wrongdoer of the profits of his trade, and bears no resemblance to the forfeitures that the Ninth Circuit categorically held to constitute "punishment" for an "offense" in this case.

As the dissenters below noted (App., *infra*, 27a), some statements in *Halper*, *Austin*, and *Kurth Ranch*, if read 'out of context,'" might lend support to the Ninth Circuit's decision in this case. Whether those cases should be read to change established double jeopardy doctrine has created considerable confusion and has led to a conflict in the lower courts. See, *e.g.*, *United States* v. *Morgan*, 51 F.3d 1105, 1113 (2d Cir. 1995) (noting proliferation of double jeopardy claims in various contexts following *Halper* and Second Circuit's conclusion that an *in rem* civil forfeiture is not "punishment" for double jeopardy purposes, but acknowledging the Ninth Circuit's decision in this case as contrary authority), petition for cert. pending, No. 95-14 (July 3, 1995). The Sixth Circuit has recently agreed with the Ninth Circuit's analysis in a case involving the forfeiture of property that facilitated or was intended to facilitate drug trafficking. See *United States* v. *Ursery*, No. 94-1127 (July 13, 1995), petition for cert. pending, No. 95-—— (Aug. 28, 1995). On the other hand, as we have noted, the Fifth Circuit in *Tilley*, *supra*, reached a conclusion contrary to the Ninth Circuit's holding in this case in an indistinguishable factual context. The D.C. Circuit followed the Fifth Circuit's decision in the analogous context of civil disgorgement proceed-

ings in *Bilzerian*, *supra*. See also *Carson*, 52 F.3d at 1182-1183. The Ninth Circuit's conclusion that the civil forfeiture of proceeds of drug trafficking is always punitive for double jeopardy purposes is also inconsistent with *United States* v. *Borromeo*, 995 F.2d 23, amended on reh'g, 1 F.3d 219 (4th Cir. 1993), where the court ordered an asset-by-asset review to ascertain whether forfeiture of the proceeds would be punitive.[4] The courts of appeals' disarray on an issue of such widespread application warrants this Court's attention.

2. As this Court's cases recognize, the component of the Double Jeopardy Clause on which the Ninth Circuit relied does not prohibit the imposition of punishment (or multiple punishments) *simpliciter*, but

[4] The Ninth Circuit distinguished *Borromeo* by stating that it predated, and did "not survive," *Austin*. App., *infra*, 16a n.9. The Ninth Circuit overlooked, however, the fact that the Fourth Circuit granted rehearing in *Borromeo* following this Court's decision in *Austin*. 1 F.3d 219 (1993). Far from reading *Austin* to require a "categorical" conclusion that all forfeitures of drug proceeds are punishment, the Fourth Circuit appeared to assume that the only issue as to punishment that possibly can arise in a proceeds case relates, not to the ill-gotten gains themselves, but to property derived from those gains through the (presumably lawful) labors of the claimant. Even in that context, the Fourth Circuit noted, "[i]t is arguable that there is little justification for the position that one who successfully parlays his tainted dollar into a fortune should be permitted to enjoy a windfall." *Id.* at 221. The court was unwilling, however, to say that such a forfeiture can never be punitive, since the ratio of the value of the proceeds to the harm caused by the claimant's conduct "may, *in a given case*, be relevant under * * * *Austin*." *Ibid.* (emphasis added). Accordingly, it remanded to the district court to make "a proportionality determination with regard to each and all items of the property which the government seeks to forfeit." *Ibid.*

only the imposition of "multiple punishments *for the same offense*." *Halper*, 490 U.S. at 440 (emphasis added); *Kurth Ranch*, 114 S. Ct. at 1945 ("A defendant convicted and punished for an offense may not have a nonremedial civil penalty imposed against him *for the same offense* in a separate proceeding") (emphasis added). Quite apart from the Ninth Circuit's error in concluding that a civil forfeiture of drug proceeds is inherently punitive, the court also erred in finding that the forfeiture "offense" was the "same" as the crimes for which the claimants were punished.

Whether two offenses are the "same" for double jeopardy purposes does not turn on whether the same illegal conduct was involved in both, but on a comparison of the elements that the government is required to prove to prevail under each; the offenses are different if each requires proof of a fact that the other does not. See *Blockburger* v. *United States*, 284 U.S. 299 (1932); see also *Witte* v. *United States*, 115 S. Ct. 2199, 2204 (1995) (noting that *Blockburger* analysis applies to "multiple punishment" claims); *United States* v. *Dixon*, 113 S. Ct. 2849 (1993) (overruling *Grady* v. *Corbin*, 495 U.S. 508 (1990)). The Ninth Circuit has interpreted the decision below to require the conclusion that forfeitures of instrumentalities or proceeds of drug trafficking are "a species of greater offenses with respect to the lesser-included [criminal] offenses," because the forfeiture statutes "incorporate the elements of [the] criminal offenses." *United States* v. *One 1978 Piper Cherokee Aircraft*, 37 F.3d 489, 495 (1994).[5] The

[5] While our petition for rehearing and suggestion for rehearing en banc were pending in the instant case, we also sought rehearing in *One 1978 Piper Cherokee Aircraft*. On

Sixth Circuit recently reached the same conclusion. See *Ursery*, No. 94-1127, slip op. 10-11.

The conclusions reached by the Ninth and Sixth Circuits depart from the consistent course of decisions of this Court applying the *Blockburger* rule. An offense is "included" within another under the *Blockburger* rule only if every conceivable application of the "greater" offense "necessarily" establishes the existence of the "included" offense. See, *e.g.*, *United States* v. *Woodward*, 469 U.S. 105, 108 & n.4 (1985) (per curiam); *Brown* v. *Ohio*, 432 U.S. 161, 168 (1977) (offense is lesser-included under *Blockburger* if it is "invariably true" that the lesser offense "requires no proof beyond that which is required for conviction of the greater"); accord *Schmuck* v. *United States*, 489 U.S. 705, 716 (1989) (adopting "elements" test for determining whether offense is "lesser included" under Fed. R. Crim. P. 31(c); offense is not lesser-included "unless the elements of the lesser offense are a subset of the elements of the charged offense"); *id.* at 719 ("the lesser offense must not only be part of the greater in fact, but it must be embraced within the legal definition of the greater as part thereof").

The forfeiture "offenses" cannot be deemed the "same" as the claimants' criminal offenses under the traditional understanding of *Blockburger*. The forfeiture statute contains at least one element that is not part of the criminal offenses, to wit, the existence

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June 29, 1995, the Ninth Circuit, acting *sua sponte*, stayed action on that rehearing petition pending the filing, and final disposition by this Court, of any petition by the United States for a writ of certiorari to review the decision in this case.

of property derived from, or used in, criminal activities. Indeed, forfeiture may be had under 21 U.S.C. 881(a)(6) if the property was "intended" for use, by anyone, in the commission of narcotics crimes, even if no such crime was actually committed. Cf. *89 Firearms*, 465 U.S. at 363-364.

Moreover, each of the crimes committed by the claimants—conspiracy and possession of a controlled substance with intent to distribute it and money laundering—requires proof of a certain criminal mental state that the government need not prove, with respect to the claimant-owner, in establishing the forfeiture offense. Indeed, the forfeiture statute does not require that the claimant-owner have committed any criminal offense at all. It is sufficient that the property in question was derived from or used in the criminal activities of *anyone*. See, *e.g.*, *Austin*, 113 S. Ct. at 2810 n.11 (noting that forfeiture of property may be punitive as to the owner even though the forfeiture may be had for "acts of a person other than the owner"); *Origet* v. *United States*, 125 U.S. 240, 246 (1888) ("The person punished for the [criminal] offense may be an entirely different person from the owner of the merchandise, or any person interested in it"); *United States* v. *Chandler*, 36 F.3d 358 (4th Cir. 1994) ("It is not an element of the government's case to prove the involvement of the property's owner in the commission of the offense giving rise to the forfeiture"), cert. denied, 115 S. Ct. 1792 (1995). In those circumstances, the Ninth Circuit's view that the narcotics and money laundering crimes are necessarily "included" within the forfeiture "offenses" constitutes a significant departure from the controlling decisions of this Court. That departure warrants this Court's review.

3. Even if the forfeitures in this case constituted "punishment" for the same offenses for which claimants were convicted, the "Double Jeopardy Clause simply is not implicated" if the criminal action was part of the same "proceeding" as the forfeiture action, because in a single proceeding "the multiple-punishment issue would be limited to ensuring that the total punishment did not exceed that authorized by the legislature." *Halper*, 490 U.S. at 450; see also *Missouri* v. *Hunter*, 459 U.S. 359 (1983). The Ninth Circuit concluded that the civil forfeitures and criminal convictions must be deemed to have resulted from "separate" proceedings because two criminal cases that are separately tried are ordinarily considered "separate" for double jeopardy purposes. App., *infra*, 10a (citing *Jeffers* v. *United States*, 432 U.S. 137 (1977)). The Ninth Circuit erred in reaching that conclusion.

This Court recognized in *Halper*, 490 U.S. at 450, that nothing in that decision would "prevent the Government from seeking and obtaining both the full civil penalty and the full range of statutorily authorized criminal penalties in the same proceeding." Because civil and criminal actions cannot be joined in a single trial—and never have been joined under our system of justice—*Halper* implies that inquiry into whether those actions constitute the "same proceeding" for double jeopardy purposes cannot turn solely on our traditional treatment of formally "separate" *criminal* cases, which *can* be joined in a single trial. See *United States* v. *Millan*, 2 F.3d 17, 20 (2d Cir. 1993), cert. denied, 114 S. Ct. 922 (1994). Indeed, even in the context of purely criminal proceedings, it is not invariably true that formally separate criminal trials involving the same offense amount to

"separate" proceedings that trigger double jeopardy protections. See, *e.g.*, *Justices of Boston Municipal Court* v. *Lydon*, 466 U.S. 294, 309 (1984) (two-tier state system, even if "technically" resulting in two trials, "can be regarded as * * * a single, continuous course of judicial proceedings" that does not implicate the concerns of the Double Jeopardy Clause).

The relevant question must instead be whether the maintenance of parallel civil forfeiture and criminal actions "constitute[s] 'governmental oppression of the sort against which the Double Jeopardy Clause was intended to protect.' " *Justices of Boston Municipal Court* v. *Lydon*, 466 U.S. at 310 (quoting *United States* v. *Scott*, 437 U.S. 82, 91 (1978)). As the Ninth Circuit acknowledged, App., *infra*, 7a-8a, the Second and Eleventh Circuits have answered that question in the negative. See, *e.g.*, *Millan*, 2 F.3d at 20; *United States* v. *One Single Family Residence*, 13 F.3d 1493, 1499 (11th Cir. 1994). Those circuits have recognized that the simultaneous pursuit of civil and criminal actions does not implicate the concern that the government "is seeking the second punishment because it is dissatisfied with the sanction obtained in the first proceeding." *Halper*, 490 U.S. at 451 n.10. The Ninth Circuit's disagreement with the conclusions of two other circuits warrants this Court's review.

4. The decision in this case has significant ramifications. In civil cases, the decision has created grave uncertainty about the extent to which the government may seek *in rem* forfeiture when a potential claimant has previously been prosecuted criminally. The result has been to chill the efficient administration of the important federal asset-forfeiture program.

In criminal cases, as Judge Rymer's dissent predicted in describing the "flip side of the panel's reasoning," App., *infra*, 26a, the decision below has given rise to a large number of motions to dismiss based on the prior institution of civil forfeiture proceedings by the government. The Ninth Circuit has held that criminal defendants have a right to an interlocutory appeal under *Abney* v. *United States*, 431 U.S. 651 (1977), when the district court does not sustain the plea of double jeopardy. See *United States* v. *Chick*, No. 94-30395 (July 14, 1995), slip op. 8427, 8431-8435; accord *Morgan*, 51 F.3d at 1109-1110. Thus, criminal trials cannot proceed in the Ninth Circuit until defendants obtain appellate rulings on their double jeopardy claims. Numerous interlocutory appeals by criminal defendants, and by the government in cases in which the indictment has been dismissed in reliance on the decision below, are currently pending before the Ninth Circuit.[6] Even in

[6] More than a hundred appeals addressing the validity of indictments or criminal convictions and premised on the panel's analysis in this case have been filed and/or decided since the date of that decision in the Ninth Circuit alone. See, *e.g.*, *McBroom* v. *United States*, No. 95-10088; *Oakes* v. *United States*, No. 94-36248; *Orallo* v. *United States*, No. 95-16223; *Quigley* v. *United States*, No. 95-10089; *Ringor* v. *United States*, No. 95-16042; *Melvin Robinson* v. *United States*, No. 95-10087; *Patricia Robinson* v. *United States*, No. 95-10099; *United States* v. *Ailemen*, Nos. 95-10233 & 95-10244; *United States* v. *Aldridge*, No. 95-10219; *United States* v. *Amaya*, No. 95-30064; *United States* v. *Ayanleye*, Nos. 95-10226 & 95-10279; *United States* v. *Backues*, No. 95-16301; *United States* v. *Bailey*, No. 95-10023; *United States* v. *Barton*, 46 F.3d 51 (9th Cir. 1995); *United States* v. *Blair*, No. 95-35468; *United States* v. *Boyd*, No. 94-30450; *United States* v. *Branum*, No. 95-30045; *United States* v. *Bravo*, No. 95-

cases where the government ultimately prevails on appeal, the decision below will result in substantial

15842; *United States* v. *Brown*, No. 94-30271; *United States* v. *Cain*, No. 95-35270; *United States* v. *Carpa*, No. 95-10258; *United States* v. *Chick*, No. 94-30395; *United States* v. *Cole*, No. 95-35358; *United States* v. *Connell*, No. 94-10426; *United States* v. *Cretacci*, No. 94-10235; *United States* v. *Day*, No. 95-35741; *United States* v. *Domitrovich*, No. 95-35680; *United States* v. *D'Uva*, No. 95-50167; *United States* v. *Elliott*, No. 94-30152; *United States* v. *Escobedo*, No. 95-30229; *United States* v. *Espinoza*, No. 95-55647; *United States* v. *Estis*, No. 95-50089; *United States* v. *Faber*, No. 94-30228; *United States* v. *Flowers*, No. 95-10337; *United States* v. *Fontaine*, No. 95-50213; *United States* v. *Frasquillo*, No. 94-10444; *United States* v. *Gartner*, No. 95-50072; *United States* v. *Good*, No. 95-30102; *United States* v. *Griffis*, No. 95-10292; *United States* v. *Harrison*, No. 95-35211; *United States* v. *Hepler*, No. 95-35495; *United States* v. *Hill*, No. 95-35381; *United States* v. *Hollingsworth*, No. 95-30228; *United States* v. *Housely*, Nos. 95-10126 & 94-10523; *United States* v. *Ingraham*, No. 93-30307; *United States* v. *Inocencio*, No. 95-10021; *United States* v. *Mir*, No. 95-10094; *United States* v. *Jain*, No. 95-35625; *United States* v. *Jordan*, No. 95-35520; *United States* v. *Kearns*, No. 94-10373; *United States* v. *Kemmish*, No. 94-50621; *United States* v. *Leonis*, No. 94-10522; *United States* v. *Lester*, Nos. 95-10301 & 95-16414; *United States* v. *Mack*, No. 95-35125; *United States* v. *Manarite*, Nos. 95-70561 & 95-70562; *United States* v. *Mancuso*, No. 95-10294; *United States* v. *Martin*, No. 95-35554; *United States* v. *Mathisen*, No. 95-35756; *United States* v. *McClinton*, No. 95-30148; *United States* v. *McKenna*, No. 93-30315; *United States* v. *Mejia-Mesa*, No. 95-35429; *United States* v. *Meola*, No. 95-35556; *United States* v. *Montalvo*, No. 94-10110; *United States* v. *Mosley*, No. 95-16512; *United States* v. *Muth*, No. 95-35783; *United States* v. *Nakamoto*, No. 95-10091; *United States* v. *Nussbaumer*, No. 95-35719; *United States* v. *Ortiz-Sanchez*, No. 94-30276; *United States* v. *Palacios-Amaya*, No. 95-30064; *United States* v. *Pearson*, No. 95-35636; *United States* v. *Plunk*, Nos. 94-30421 &

delays in the adjudication of defendants' guilt, potentially prejudicing the government's ability to prove its case. In cases where the government does not prevail on appeal, the decision below will result in the unwarranted termination of criminal prosecutions.

The decision below has also formed the basis for a large number of post-conviction challenges under 28 U.S.C. 2255 from defendants claiming that their criminal prosecutions in the Ninth Circuit imper-

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94-30422; *United States* v. *Potts*, No. 94-35924; *United States* v. *Pruitt*, Nos. 94-50659, 94-50660; *United States* v. *Putchongkarrat*, No. 95-50005; *United States* v. *Ramirez*, No. 95-10235; *United States* v. *Ramos-Oseguera*, No. 95-10236; *United States* v. *Renteria*, No. 94-56034; *United States* v. *Reynolds*, No. 94-50390; *United States* v. *Roberts*, No. 95-15891; *United States* v. *Ross*, No. 95-15912; *United States* v. *Saglam*, No. 95-50284; *United States* v. *Sailele*, No. 95-10306; *United States* v. *Sanders*, No. 95-30169; *United States* v. *Sandoval*, No. 95-35360; *United States* v. *Schubert*, No. 95-15836; *United States* v. *Sheridan*, No. 95-55841; *United States* v. *Sherrett*, C.A. No. 95-30059; *United States* v. *Shomorin*, No. 95-10227; *United States* v. *Shorb*, Nos. 93-30449 & 93-30450; *United States* v. *Singleton*, No. 95-16395; *United States* v. *Smith*, No. 95-35542; *United States* v. *Stanwood*, No. 95-35158; *United States* v. *Sterling*, No. 95-35152; *United States* v. *Mark Thomas Taggatz*, No. 95-50169; *United States* v. *Tamez*, No. 95-35354; *United States* v. *Trujillo*, No. 95-35306; *United States* v. *Vega*, No. 94-10521; *United States* v. *Vominh*, C.A. No. 95-30107; *United States* v. *Vominh (Tan)*, No. 95-30057; *United States* v. *Vominh (Thanh Hai)*, No. 95-30060; *United States* v. *Walsh*, No. 95-10159; *United States* v. *Washington*, No. 95-50076; *United States* v. *Wehr*, No. 95-35553; *United States* v. *Wilhelm*, No. 95-35784; *United States* v. *Whittlesey*, No. 95-35192; *United States* v. *Wilson*, No. 95-10083; *United States* v. *Wong*, No. 94-30404; *United States* v. *Wright*, No. 95-55908; *United States* v. *Young*, No. 93-30308.

missibly followed a civil forfeiture of property that represented the proceeds of, or was otherwise involved in, their offenses.[7] Some of those challenges

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[7] In the Central District of California alone, the district where this case originated, there have been numerous challenges to final judgments of conviction based on the decision in this case. See, *e.g.*, *United States* v. *Abday*, No. CV 95-5019-JMI; *United States* v. *Aldana*, No. CV 95-3512-SVW; *United States* v. *Barnes*, No. CV 95-116-WJR; *United States* v. *Bines*, No. CV 95-957-LEW; *United States* v. *Brown*, No. CV 95-5013-WMB; *United States* v. *Brown*, No. CV 95-119-ER; *United States* v. *Butler*, No. CV 95-2779-ER; *United States* v. *Cardenas-Triana*, No. CV 95-2820-WMB; *United States* v. *Coleman*, No. CV 95-4273-SVW; *United States* v. *Comisar*, No. CV 95-3060-AWT; *United States* v. *Contreras*, No. CV 95-1402-JSL; *United States* v. *Everett*, No. CV 95-1410-ER; *United States* v. *Gentry*, No. CV 95-4002-JSL; *United States* v. *Gutierrez (Jesus Felix)*, No. CV 94-6050-ER; *United States* v. *Gutierrez (Marco Antonio)*, No. CV 95-4275-WMB; *United States* v. *Harris*, No. CV 95-2593-WJR; *United States* v. *Gomez-Hernandez*, No. CV 95-2822-JGD; *United States* v. *Hernandez*, No. CV 95-3777-JMI; *United States* v. *Ricardo Huitron*, No. CV 95-3517-DMT; *United States* v. *Gabriel Huitron*, No. CV 95-2559-DMT; *United States* v. *Huntoon*, No. CV 95-3999-WJR; *United States* v. *Hutchens*, No. CV 95-2558-WJR; *United States* v. *Kelly*, No. CV 95-1409-AAH; *United States* v. *Johnson*, No. CV 95-5002-WDK; *United States* v. *Larsen*, No. CV 95-2700-CBM; *United States* v. *Lefebvre*, No. SA CV 95-488-GLT; *United States* v. *Lingenfelter*, No. SA CV 95-500-AHS; *United States* v. *Mendoza*, No. CV 95-4280-HLH; *United States* v. *Miller*, No. CV 95-3773-SVW; *United States* v. *Montenegro*, No. CV 95-5015-WMB; *United States* v. *Morgan*, No. CV 95-4629-SVW; *United States* v. *Morgan (Lawrance)*, No. SA CV 94-1027-AHS; *United States* v. *Marolf*, No. SA CV 95-418-AHS; *United States* v. *Nassar*, No. CV 95-1367-TJH; *United States* v. *Ono*, No. CV 95-3016-AWT; *United States* v. *Parker*, No. CV 95-1241-RMT; *United States* v. *Patton*, No. CV 95-4277-WDK; *United States* v. *Pena-Urias*, No. CV 95-3627-JGD;

have been stayed pending the expiration of the time allowed for the filing of a petition for a writ of certiorari in this case (or pending the Court's action on our petition). Others continue to be litigated in district courts throughout the Ninth Circuit. Those cases have led to collateral litigation about issues of retroactivity and procedural default, which could be obviated by this Court's prompt intervention.

5. In addition to seeking review of the Ninth Circuit's decision in this case, we have also filed a petition for a writ of certiorari seeking review of the Sixth Circuit's decision in *Ursery*, *supra*. We believe that the Court should grant certiorari and give plenary consideration to both cases. While both cases present similar double jeopardy issues, those issues arise in somewhat different factual and legal contexts that may illuminate the Court's consideration of the problem. *Ursery* involves the reversal of a criminal conviction in reliance on a purportedly separate civil forfeiture proceeding. In addition, the civil forfeiture in *Ursery* did not involve property alleged to be "proceeds" of criminal activities, but property that allegedly was used to facilitate the commission of narcotics

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United States v. *Pitts*, No. CV 95-2740-ER; *United States* v. *Reaves*, No. CV 94-4042; *United States* v. *Rodriguez-Ortiz*, No. 95-5091-HLH; *United States* v. *Andrew David Rubin*, No. CV 95-108-RMT; *United States* v. *Matthew Craig Rubin*, No. CV 95-107-RMT; *United States* v. *Smith*, No. CV 95-3776-JGD; *United States* v. *Stephens*, No. CV 95-2782-DWW; *United States* v. *Tan*, No. CV 95-3774-MRP; *United States* v. *Tillman*, No. CV 95-3772-JGD; *United States* v. *Unanka*, No. CV 95-2146-AWT; *United States* v. *Wheaton*, No. SA CV 95-414-AHS; *United States* v. *Yant*, No. CV 95-2001-RSWL.

offenses. A ruling that the civil forfeiture of "proceeds" is not "punishment" would not necessarily dispose of that question with respect to facilitating property. In order to ensure that the Court will have a full opportunity to explore the issues that are dividing the lower courts, we respectfully suggest that the Court grant certiorari in both cases and consolidate them for argument.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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AUGUST 1995

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 93-5594

D.C. No. CV 91-3264-A

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE,

v.

$405,089.23 U.S. CURRENCY, ET AL., DEFENDANTS.
CHARLES ARLT; JAMES WREN; PAYBACK MINES,
CLAIMANTS-APPELLANTS.

Appeal from the United States District Court
for the Central District of California
A. Wallace Tashima, District Judge, Presiding

Submitted July 12, 1994 *
Pasadena, California

Filed September 6, 1994

Before: Cecil F. Poole and Stephen Reinhardt, Circuit Judges, and Jack E. Tanner,** District Judge.

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* The panel unanimously finds this case suitable for disposition without oral argument. Circuit Rule 34-4.

** Honorable Jack E. Tanner, Senior United States District Judge for Western District of Washington, sitting by designation.

OPINION

REINHARDT, Circuit Judge:

This case involves the constitutional limits on the government's ability to seek criminal penalties and civil forfeiture based on the same violations of law. The government brought a criminal prosecution against the claimants at approximately the same time as it instituted this separate and parallel civil forfeiture action under 18 U.S.C. § 981(a)(1)(A) and 21 U.S.C. § 881(a)(6). The question is whether the government violated the Double Jeopardy Clause of the Fifth Amendment by obtaining convictions in the criminal case and then continuing to pursue the forfeiture action. We answer the question in the affirmative and reverse the order of forfeiture.

I.

Claimants James Wren, Charles Arlt, and Payback Mines appeal pro se the forfeiture of their property following Wren and Arlt's criminal convictions of various counts of conspiracy and money laundering. In the criminal case, Arlt, Wren, and several others had been accused of conducting a large-scale methamphetamine manufacturing operation. Through a series of front corporations, including Payback Mines, the defendants had sought to create the appearance that they were engaging in legitimate gold mining activities.

The government instituted this civil forfeiture action on June 17, 1991, five days after the grand jury

issued a superseding indictment in the parallel criminal case. The forfeiture complaint listed several hundred thousand dollars' worth of property: $405,089.23 in a Security Pacific Bank account; $8,929.93 in three Bank of America accounts; $123,000 in cash and 138 silver bars seized at Mayhill Bail Bonds; one Bell 47 G-2 helicopter; one shrimp boat; a Piper 6 Cherokee airplane; and eleven automobiles and one boat purchased at an auction. The government argued that these pieces of property were connected to the offenses that were the subject of the parallel criminal case. It claimed that the property was forfeitable on two independent grounds: as proceeds of illegal narcotics transactions under 21 U.S.C. § 881(a)(6), and as property "involved in" money laundering violations under 18 U.S.C. § 981(a)(1)(A). Arlt, Wren, and Payback Mines filed claims to the res. Pursuant to a stipulation between the parties, the district court effectively stayed the civil forfeiture action pending the completion of the parallel criminal case.

The criminal case terminated on March 27, 1992, with the convictions of Arlt, Wren, and their co-defendants. Over eight months later, on December 4, the government filed a motion for summary judgment in the parallel forfeiture action. The government's motion relied on the criminal conviction, a declaration submitted by I.R.S. Special Agent Phillip Mullins, and various pieces of documentary evidence. Asserting that this evidence established probable cause and therefore shifted the burden of proof to the claimants, *see* 19 U.S.C. § 1615, the government claimed that the claimants had failed to demonstrate that the property was not subject to forfeiture.

On April 1, 1993, the district court granted the government's motion and entered a judgment ordering that the entire res be forfeited to the United States. Adopting the government's proposed statement of uncontroverted facts and conclusions of law with only a few minor alterations, the district court held that "[t]he convictions of Arlt, Wren and Hill of conspiracy to aid and abet the manufacture of methamphetamine, conspiracy to launder monetary instruments, and money laundering are sufficient for probable cause by themselves." The court also noted several additional factors, relating to specific pieces of property, which bolstered its conclusion that the government had established probable cause. For example, the court noted that $123,000 is an extremely large amount of cash, that Arlt, Wren, and Hill had signature authority over several of the bank accounts, and that the vehicles were purchased with cash and placed in the name of Arlt's business, Payback Mines. The district court concluded that the government had established probable cause under both its "narcotics proceeds" theory and its "money laundering" theory. Because the claimants did not introduce any evidence tending to show that the property was not subject to forfeiture, the court granted summary judgment in favor of the government. Arlt, Wren, and Payback Mines appeal pro se.

II.

On appeal, Arlt, Wren, and Payback Mines claim that the government lacked probable cause to institute these proceedings, that the Double Jeopardy Clause of the Fifth Amendment bars this action, that the forfeiture violates the Excessive Fines Clause of the Eighth Amendment, and that the district court

lacked in rem jurisdiction over a small part of the res. Where reversal of the district court's judgment on one ground would bar further proceedings against a party opposing the government, while reversal on other grounds would afford less than complete relief to that party, we first decide the issue which would afford complete relief. Here, the Double Jeopardy Clause argument, if successful, would result in a complete bar to the maintenance or reinstitution of these proceedings, while the relief sought on the other grounds would not. Thus, we begin with the Double Jeopardy Clause.[1] In this case, because we hold that the clause is applicable and bars further proceedings, we end with it as well.[2]

A.

The most basic element of the Double Jeopardy Clause is the protection it affords against successive

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[1] The claimants did not raise the double jeopardy argument in the district court. However, they rely on the Supreme Court's decision in *Austin v. United States*, 113 S. Ct. 2801 (1993), which was decided after the district court's judgment in this case. The government has responded to the claimants' argument on the merits, and it has not asserted that the claimants waived the double jeopardy defense. Accordingly, we consider the issue to be properly before us.

[2] Although the claimants' relief would be incomplete if we were to rest our decision on probable cause, and thus we do not reach that ground, it seems clear that the goverment lacked such cause for the institution of these proceedings. In seeking to satisfy its probable cause burden, the government relies almost exclusively on Arlt's and Wren's criminal convictions. Because these convictions were not obtained until *after* the institution of this forfeiture action, it may not do so. *See United States v. $191,910.00 in U.S. Currency*, 16 F.3d 1051, 1066-71 (9th Cir. 1994).

prosecutions—that is, against efforts to impose punishment for the same offense in two or more separate proceedings. That protection applies with equal force whether the first prosecution results in a conviction or an acquittal. *See Burks v. United States*, 437 U.S. 1 (1978); *Brown v. Ohio*, 432 U.S. 161 (1977). Whatever other abuses the Clause prohibits, at its most fundamental level it protects an accused against being forced to defend himself against repeated attempts to exact one or more punishments for the same offense. "The basis of the Fifth Amendment protection against double jeopardy is that a person shall not be harassed by successive trials; that an accused shall not have to marshal the resources and energies necessary for his defense more than once for the same alleged criminal acts." *Abbate v. United States*, 359 U.S. 187, 198-99 (1959) (opinion of Brennan, J.). This principle is "deeply ingrained in at least the Anglo-American system of jurisprudence," *Green v. United States*, 355 U.S. 184, 187 (1957), and, in fact, traces its roots "deep into Greek and Roman times." *Bartkus v. Illinois*, 359 U.S. 121, 151-52 (1959) (Black, J., dissenting).

There can be little doubt that this case implicates the core Double Jeopardy protection. Over a year after the claimants' criminal convictions, a different district judge in a different proceeding awarded the government title to nearly all of the claimants' property, because of its connection with the *very offenses* that resulted in criminal punishment. The forfeiture complaint in this case was based on precisely the same conduct addressed in the claimants' criminal case, and it sought to forfeit title to the claimants' property on the basis of precisely the same violations of the same statutes. In short, this civil forfeiture

action and the claimants' criminal prosecution addressed the identical violations of the identical laws; the only difference between the two proceedings was the remedy sought by the government. Yet the government could have sought both remedies without subjecting Arlt and Wren to multiple and successive proceedings. It could have included a criminal forfeiture count in the indictment which led to the claimants' convictions. However, it did not choose to follow that course. Rather, it elected to pursue its forfeiture action in a separate and parallel proceeding, which was decided after the criminal trial. By doing so, the government prevented Arlt and Wren from "being able, once and for all, to conclude [their] confrontation with society" at the time of the jury's verdict. *United States v. Jorn*, 400 U.S. 470, 486 (1971) (opinion of Harlan, J.).

The government's actions in this case clearly raise substantial double jeopardy concerns. However, to determine whether these actions violate the Fifth Amendment, we must consider two questions: whether the civil forfeiture action and the claimants' criminal prosecution constituted separate "proceedings," and whether civil forfeiture under 21 U.S.C. § 881(a)(6) and 18 U.S.C. § 981(a)(1)(A) constitutes "punishment." If the answer to both of these questions is yes, then the government's actions constituted a successive attempt to impose punishment, in violation of the Double Jeopardy Clause.

For the reasons we have expressed above, we have little difficulty in determining that this civil forfeiture proceeding constitutes a separate "proceeding" from the prosecution which resulted in the claimants' criminal convictions. We recognize that the Second and Eleventh Circuits have recently held in cases like

this one that criminal prosecutions do not constitute separate "proceedings" from parallel civil forfeiture actions for double jeopardy purposes. *See United States v. One Single Family Residence*, 13 F.3d 1493, 1499 (11th Cir. 1994); *United States v. Millan*, 2 F.3d 17, 20 (2d Cir. 1993). Those courts relied on the fact that the forfeiture actions and criminal prosecutions took place at approximately the same time and involved the same criminal violations, and were part of a "single, coordinated prosecution." *One Single Family Residence*, 13 F.3d at 1499. For that reason, the Second and Eleventh Circuits refused to conclude that the parallel criminal and civil actions constituted separate "proceedings." However, we believe that the position adopted by the Second and Eleventh Circuits contradicts controlling Supreme Court precedent as well as common sense.

We fail to see how two separate actions, one civil and one criminal, instituted at different times, tried at different times before different factfinders, presided over by different district judges, and resolved by separate judgments, constitute the same "proceeding."[3] In ordinary legal parlance, such actions are often characterized as "parallel proceedings," but not as the "same proceeding." A forfeiture case and a criminal prosecution would constitute the *same* proceeding only if they were brought in the same indictment and tried at the same time.[4] The government

[3] *Cf. Abbate*, 359 U.S. at 202 (Black, J., dissenting) ("The legal logic used to prove one thing to be two is too subtle for me to grasp.").

[4] We do not mean to suggest that the Double Jeopardy Clause prevents a forfeiture count from being tried separately from other criminal counts based on the same offense if the

could have sought criminal forfeiture in this case pursuant to 18 U.S.C. §§ 982, 3554 and 21 U.S.C. § 853. If it had done so and included the forfeiture count in the same indictment as the other criminal counts and then proceeded to trial against the defendants on all counts, the forfeiture case and the criminal prosecution would have constituted the "same proceeding."[5] However, the government chose to proceed against the claimants on two separate fronts—in two separate, parallel proceedings. Because the district court followed the customary practice and held the civil action in abeyance pending the outcome of the criminal prosecution, the government obtained a significant advantage: if it succeeded in the criminal case it could obtain summary judgment based on the conviction (assuming of course that it had probable cause at the time it instituted the forfeiture action), while if it lost it could still seek forfeiture and urge that the more lenient standards applicable in civil proceedings applied. *See* 1 David B. Smith, *Prosecution and Defense of Forfeiture Cases*, ¶ 10.01, at 10-4 to 10-5 (1993) (noting that it is to the government's advantage to have the civil forfeiture action heard after the criminal case). We believe that such a coordinated,

defendant *consents* to separate trials. Nor do we express any view as to bifurcated proceedings before the same factfinder and presiding judicial officer.

[5] Such an attempt to impose multiple punishments in the same proceeding would satisfy the Double Jeopardy Clause so long as the legislature intended to impose *both* criminal forfeiture and the more standard criminal penalties for a violation of the criminal statutes at issue here. *See Missouri v. Hunter*, 459 U.S. 359 (1983). The issue in such a case would simply be one of statutory construction.

manipulative prosecution strategy heightens, rather than diminishes, the concern that the government is forcing an individual to "run the gantlet" more than once. *Green*, 355 U.S. at 190. We are not willing to whitewash the double jeopardy violation in this case by affording constitutional significance to the label of "single, coordinated prosecution." [6]

In fact, the Supreme Court has made clear that parallel actions, instituted at about the same time and involving the same criminal conduct, constitute *separate* proceedings for double jeopardy purposes. *See Jeffers v. United States*, 432 U.S. 137 (1977). In *Jeffers*, the government initiated parallel *criminal* actions against the same defendant based on the same conduct by bringing two separate indictments on the same day. One indictment charged a conspiracy to distribute heroin and cocaine, in violation of 21

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[6] Were we to consider successive attempts to exact punishment to constitute the "same proceeding" under the Double Jeopardy Clause simply because they were brought as part of a "single, coordinated prosecution," we would be encouraging one of the worst abuses of prosecutorial power—the government's coordinated use of multiple proceedings to harass or exhaust particular defendants. In one prominent recent example, the federal government unsuccessfully sought to engage in a coordinated campaign of multiple prosecutions in an attempt to shut down one of the largest retail distributors of sexually oriented literature in the United States. *See United States v. P.H.E., Inc.*, 965 F.2d 848, 850-53 (10th Cir. 1992) (describing this campaign); *PHE, Inc. v. United States Dep't of Justice*, 743 F. Supp. 15, 17-20 (D.D.C. 1990) (same). In the cited cases, the Tenth Circuit ordered a hearing regarding whether an indictment arising from this scheme should be dismissed on the grounds of prosecutorial vindictiveness, *see* 965 F.2d at 860, and the District Court for the District of Columbia issued a preliminary injunction against further prosecution of the scheme. *See* 743 F. Supp. at 27.

U.S.C. §§ 841(a)(1) and 846. The other indictment charged Jeffers with conducting a continuing criminal enterprise to violate the drug laws, in violation of 21 U.S.C. § 848. Jeffers opposed the government's motion to join the offenses for trial, and the district court denied the motion. After the first jury convicted Jeffers of the conspiracy count, he moved to dismiss the continuing criminal enterprise case on double jeopardy grounds. The district court held that 21 U.S.C. §§ 846 and 848 constituted separate offenses for double jeopardy purposes, and accordingly denied the motion. The Seventh Circuit affirmed on the same ground.

In affirming the judgment of Seventh Circuit, the Supreme Court explicitly rejected that court's reasoning. It held that 21 U.S.C. § 846 was a lesser included offense of 21 U.S.C. § 848. Accordingly, the two statutes stated the "same offense" under the *Blockburger* test, and the second and separate prosecution would ordinarily have been barred by the Double Jeopardy Clause. *See Jeffers*, 432 U.S. at 147-51 (plurality opinion); *id.* at 158 (Stevens, J., dissenting in part and concurring in the judgment in part). However, the plurality of four justices held that, by opposing the government's motion for joinder, Jeffers had waived any objection to the maintenance of separate proceedings. *See id.* at 152 (plurality opinion) ("[A]lthough a defendant is normally entitled to have charges on a greater and a lesser offense resolved in one proceeding, there is no violation of the Double Jeopardy Clause when he elects to have the two offenses tried separately and persuades the trial court to honor his selection."). In dissent, Justice Stevens (joined by three other justices) argued that Jeffers had not waived any double

jeopardy objection, and that a separate trial on the second indictment was accordingly barred. *See id.* at 158-60 (Stevens, J., dissenting in part and concurring in the judgment in part). In short, the decisions of eight of the nine justices in *Jeffers* rested on the common sense proposition that two parallel criminal cases, which unquestionably were brought as a part of a "single, coordinated prosecution," constituted "separate proceedings" for double jeopardy purposes.[7] *See also Missouri v. Hunter*, 459 U.S. 359, 360, 366, 367, 368, 369 (1983) (stating that there is no double jeopardy bar to the imposition of multiple punishments at a "single *trial*") (emphasis added); *see also id.* at 365 ("Because respondent has been subjected to *only one trial*, it is not contended that his right to be free from *multiple trials* for the same offense has been violated.") (emphasis added). We can discern no reason why two proceedings should be deemed one when one of the proceedings involves a criminal prosecution and the other a civil forfeiture action. We conclude, therefore, that whether or not two actions are brought as part of a "single, coordinated prosecution" is irrelevant for purposes of the Double Jeopary Clause: a civil forfeiture action which is brought and tried separately from a criminal prosecution and is based upon the same offense constitutes a separate "proceeding." Thus, we must turn to the question whether the forfeiture the government seeks to impose constitutes "punishment."

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[7] The ninth justice, Justice White, did not discuss this issue, because he concluded that 21 U.S.C. § 846 was not a lesser included offense of 21 U.S.C. § 848.

B.

A decade ago, the law was clear that civil forfeitures did not constitute "punishment" for double jeopardy purposes. In *United States v. One Assortment of 89 Firearms*, 465 U.S. 354 (1984), the Supreme Court held that the claimant's prior acquittal on criminal charges did not bar a subsequent action for forfeiture under 18 U.S.C. § 924(d). Applying the test set forth in *United States v. Ward*, 448 U.S. 242, 248 (1980), the Court concluded that Congress intended for forfeiture to be "a remedial civil sanction." *89 Firearms*, 465 U.S. at 363. Accordingly, it held that the Double Jeopardy Clause did not apply.

The *Ward* test, on which the Supreme Court rested its double jeopardy holding in *89 Firearms*, focused heavily on the label Congress had attached to a particular sanction. If Congress indicated a preference that the proceeding be denominated "civil" rather than "criminal," the Court would defer to that preference except in extraordinary circumstances. *See Ward*, 448 U.S. at 248. However, as sometimes happens, the Court changed its collective mind. It abandoned the *Ward* approach in *United States v. Halper*, 490 U.S. 435 (1989). There, the Court held that "the labels 'criminal' and 'civil' are not of paramount importance" in determining whether a sanction constitutes punishment for double jeopardy purposes: "The notion of punishment, as we understand it, cuts across the division between the civil and the criminal law, and for the purposes of assessing whether a given sanction constitutes multiple punishment barred by the Double Jeopardy Clause, we must follow the notion where it leads." *Id.* at 447-48. Apply-

ing these principles, the Court adopted a new test for determining whether a nominally civil sanction constitutes "punishment" for double jeopardy purposes: "[A] civil sanction that cannot fairly be said *solely* to serve a remedial purpose, but rather can only be explained as *also* serving either retributive or deterrent purposes, is punishment, as we have come to understand the term." *Id.* at 448 (emphasis added). Just last year it reaffirmed its new-found wisdom, emphasizing again that a sanction which is designed even in part to deter or punish will constitute punishment, regardless of whether it also has a remedial purpose. *See Austin v. United States*, 113 S. Ct. 2801, 2806, 2812 (1993); *see also United States v. Hudson*, 14 F.3d 536, 540 (10th Cir. 1994) ("Appellants contend that the above quoted language means that unless a sanction is 'solely' remedial, i.e., not serving deterrent or retributive ends, it is punishment. This position is confirmed by the recent Supreme Court decision in *Austin v. United States*.").

Halper involved a civil action brought under the False Claims Act. In *United States v. McCaslin*, 959 F.2d 786 (9th Cir.), *cert. denied*, 113 S. Ct. 382 (1992), we underestimated its force and refused to apply its rationale in a civil forfeiture action brought under 21 U.S.C. § 881(a)(7). We held that "*Halper* has no application to the very ancient practice by which instrumentalities of a crime may be declared forfeit to the government." *McCaslin*, 959 F.2d at 788. However, in its subsequent decision in *Austin*, the Supreme Court said that we were wrong and directly rejected our *McCaslin* analysis. In *Austin*, the Court specifically applied the *Halper* test to determine whether a civil forfeiture under 21 U.S.C. §§ 881(a)(4) & (a)(7) constituted "punishment,"

and it concluded that those provisions did in fact impose punishment under that test. *See Austin*, 113 S. Ct. at 2812 ("In light of the historical understanding of forfeiture as punishment, the clear focus of §§ 881(a)(4) and (a)(7) on the culpability of the owner, and the evidence that Congress understood these provisions as serving to deter and to punish, we cannot conclude that forfeiture under §§ 881(a)(4) and (a)(7) serves solely a remedial purpose.") (citing *Halper*, 490 U.S. at 448).

As the government notes, the specific holding in *Austin* was that the Eighth Amendment's Excessive Fines Clause applies to civil forfeiture actions. However, in determining whether the Excessive Fines Clause applied, the Court found it necessary to determine, as we are required to determine here, whether the forfeiture statutes at issue constituted "*punishment.*" It employed the *Halper* test—the same test it had used to decide whether a civil monetary penalty constituted "punishment" for purposes of the Double Jeopardy Clause—in making that determination. We believe that the only fair reading of the Court's decision in *Austin* is that it resolves the "punishment" issue with respect to forfeiture cases for purposes of the Double Jeopardy Clause as well as the Excessive Fines Clause. In short, if a forfeiture constitutes punishment under the *Halper* criteria, it constitutes "punishment" for purposes of *both* clauses.[8] *See* Smith, *supra*, ¶ 12.10[2], at 12-131

[8] To make it clear, we hold only that because the method of determining whether the forfeiture constitutes punishment is identical, the answer to the question whether a particular forfeiture constitutes punishment will always be the same for purposes of the Double Jeopardy Clause and the Eighth Amendment. Whether a violation of either clause

("The Supreme Court's decision in *Austin v. United States*, makes it clear that *Halper*'s double jeopardy protections do apply to the vast majority of civil forfeiture cases.") (footnote omitted). In light of the decision in *Austin*, and applying the *Halper* test here, we find the conclusion inescapable that civil forfeiture under 18 U.S.C. § 981(a)(1)(A) and 21 U.S.C. § 881(a)(6) constitutes "punishment" which triggers the protections of the Double Jeopardy Clause.

The government argues that the *Austin* Court's reasoning does not apply to the forfeitures in this case. It asserts that *this* forfeiture involves only narcotics proceeds, and that such a forfeiture is entirely remedial. The government's position finds support in a recent Fifth Circuit case. *See United States v. Tilley*, 18 F.3d 295, 300 (5th Cir. 1994) (stating that the forfeiture of illegal proceeds does not constitute punishment).[9] We nonetheless reject that argument. We do so because the government fails to recognize the legal standard that *Austin* established.

Under *Austin*, in order to determine whether a forfeiture constitutes "punishment," we must look to the entire scope of the statute which the government seeks to employ, rather than to the characteristics of the specific property the government seeks to forfeit.

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exists involves factors that are different with respect to each clause. Thus, even though we may conclude that a particular forfeiture may involve "punishment," we could still conclude, depending on the facts in the case before us, that both clauses were violated, neither clause was violated, or a violation of one but not the other occurred.

[9] The government also relies on the Fourth Circuit's pre-*Austin* decision in *United States v. Borromeo*, 995 F.2d 23, 27 (4th Cir. 1993). For the reasons set forth in the text, we believe that *Borromeo* does not survive *Austin*.

The government appears to assume that we must determine in each case whether the particular forfeiture is so excessive in relation to any remedial goal that it must be denominated as "punishment." However, the *Austin* Court explicitly refused to apply such a case-by-case approach to determining whether a forfeiture constitutes "punishment." *See Austin*, 113 S. Ct. at 2812 n.14. Rather, largely because "forfeiture statutes historically have been understood as serving not simply remedial goals but also those of punishment and deterrence," *id.*, the Court held that any determination of whether those forfeitures constitute "punishment" must look to the requirements of the forfeiture *statute* as a whole. *See* Smith, *supra*, ¶ 12.10 at 12-13 ("the *Austin* Court thought that in the forfeiture context it made sense to focus on the forfeiture statute as a whole."). In so doing, the Court adopted a categorical approach to "punishment" determinations in the forfeiture context, much like the categorical approach it has adopted for determining whether a particular statute defines a "violent felony" for purposes of the Firearms Owners' Protection Act. *See Taylor v. United States*, 495 U.S. 575, 600-02 (1990); *see also United States v. Sherbondy*, 865 F.2d 996, 1005-1010 (9th Cir. 1988).[10] To determine whether the forfeiture

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[10] The Court's decision in *Austin* to focus on the forfeiture statute, rather than on the particular conduct alleged by the government, in determining whether the Double Jeopardy Clause applies is also consistent with its decision the same term in *United States v. Dixon*, 113 S. Ct. 2849, 2860 (1993). *Dixon* held that, to determine whether two prosecutions are for the same "offense" under the Double Jeopardy Clause, a court must look to the elements of the statutory offenses charged, rather than the conduct which is alleged to underlie these offenses in the particular case.

the government seeks to impose in these proceedings constitutes "punishment," we must focus on the characteristics of the forfeiture statutes on which it relies.

While the government appears to rely principally on its argument that the res consists entirely of illegal proceeds,[11] we will also construe its argument, generously, as contending that the forfeiture *statutes* involved are limited to the forfeiture of illegal proceeds, and that they therefore do not impose "punishment." This argument not only misconceives the legal standard established in *Austin* but also misstates the scope of the statutes involved. In determining that forfeitures under §§ 881(a)(4) & (a)(7) constituted "punishment" under the *Halper* test, the *Austin* Court relied on three facts. First, the Court noted that "the historical understanding of forfeiture as punishment" weighed heavily in favor of the conclusion that forfeiture continues to serve punitive purposes. *Austin*, 113 S. Ct. at 2812. Second, the Court discerned a punitive purpose from "the clear focus of §§ 881(a)(4) and (a)(7) on the culpability of the owner." *Id.* According to the

[11] If we were to look to the particular facts of this case, it is far from clear that we would accept the government's argument that the entire res consists of narcotics proceeds. The government apparently believes that we can conclude that money and property are derived from narcotics transactions simply because people with an interest in that property have been convicted of engaging in a narcotics conspiracy. Because, with few exceptions, the government has not provided any evidence of a more specific link between narcotics transactions and the property at issue, it would be most difficult, on the record before us, to conclude that the property consists entirely of illegal proceeds.

Austin Court, this focus was evident from the fact that the statutes "expressly provide an 'innocent owner' defense," and thus authorize forfeiture only where the owner is himself involved in illegal activity. *Id.* at 2810. Finally, the Court in *Austin* relied on "the evidence that Congress understood those provisions as serving to deter and punish" to support its conclusion that the §§ 881(a)(4) & (a)(7) did not serve *solely* remedial purposes. *Id.* at 2812. In substantial part, this evidence consisted of the fact that "Congress has chosen to tie forfeiture directly to the commission of drug offenses." *Id.* at 2811.

Austin thus makes clear that at least three principles are relevant to determining whether a forfeiture constitutes "punishment." First, because of "the historical understanding of forfeiture as punishment," *id.* at 2812, there is a strong presumption that any forfeiture statute does not serve *solely* a remedial purpose. Second, where such a statute focuses on the culpability of the property owner by exempting innocent owners or lienholders, it is likely that the enactment serves at least in part to deter and punish guilty conduct. Finally, where Congress has tied forfeiture directly to the commission of specified offenses, it is reasonable to presume that the forfeiture is at least partially intended as an additional deterrent to or punishment for those violations of law.

These principles dictate that forfeiture under the statutes at issue in this case constitutes "punishment." The historically-based presumption that forfeiture is punishment continues to apply. Moreover, the statutes on which the government relies in this case focus on "the culpability of the owner," *id.*, by providing an "innocent owner" defense. *See* 18

U.S.C. § 981(a)(2) ("No property shall be forfeited under this section to the extent of the interest of an owner or lienholder by reason of any act or omission established by that owner or lienholder to have been committed without the knowledge of that owner or lienholder."); 21 U.S.C. § 881(a)(6) ("[N]o property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner."). Finally, in drafting 21 U.S.C. § 881(a)(6) (directly tying forfeiture to "any violation of this subchapter") and 18 U.S.C. § 981(a)(1)(A) (directly tying forfeiture to violation of specific criminal statutes), "Congress has chosen to tie forfeiture directly" to the commission of specific offenses. *Austin*, 113 S. Ct. at 2811. Thus, applying the principles set forth in *Austin*, we must conclude that the statutes relied upon by the government in this case operate at least in part to punish and deter.

Moreover, as we mentioned, the government misrepresents the sweep of the forfeiture statutes it invokes in this case. Despite the government's argument, the statutes are *not* limited to the proceeds of illegal activity. The so-called narcotics proceeds forfeiture statute, 21 U.S.C. § 881(a)(6), applies to all money "furnished or *intended to be furnished* by any person in exchange for a controlled substance" as well as to any money which is "used or *intended to be used to facilitate* any violation of this subchapter." *Id.* (emphasis added). This statutory language is not limited to criminal proceeds—that is, money that *has been furnished* in exchange for drugs. Rather than rendering only the *profits* of drug dealers sub-

ject to forfeiture, the statute applies to nearly any money that is involved in a narcotics transaction in some fashion. In addition to narcotics proceeds, the statute renders forfeitable money that someone intends to use to purchase drugs, or even money that someone intends to use to purchase a car or boat in order to facilitate an illegal narcotics transaction.

The money laundering forfeiture statute, 18 U.S.C. § 981(a)(1)(A), is similarly broad. It applies to any property which is "involved in" an illegal money laundering transaction. The government took pains to argue before the district court that property "involved in" a money laundering offense includes more than the actual money that is laundered. *See* Government's Memorandum of Contentions of Fact and Law (CR 46), at 17-20. Indeed, the government relied on a case which expressly *rejected* any limitation of § 981(a)(1)(A) to criminal proceeds. *See United States v. Certain Funds on Deposit*, 769 F. Supp. 80, 84-85 (E.D.N.Y. 1991) ("As the Government contends, limiting the forfeiture of funds under these circumstances to the proceeds of the initial fraudulent activity would effectively undermine the purpose of the forfeiture statute. Criminal activity such as money laundering largely depends upon the use of legitimate moneys to advance or facilitate the scheme."), *quoted in* Government's Memorandum of Contentions of Fact and Law at 19.[12]

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[12] Because the government argued vigorously in the district court that § 981(a)(1)(A) is not limited to the proceeds of illegal activity, and it continues to rely on that statute in defending the district court's order of forfeiture, it cannot now claim that this case involves *only* the forfeiture of illegal *proceeds*. *See Russell v. Rolfs*, 893 F.2d 1033, 1037-39 (9th Cir. 1990), *cert. denied*, 111 S. Ct. 2915 (1991).

As the Supreme Court did in *Austin*, we conclude that the forfeiture statutes at issue here do not serve *solely* a remedial purpose. Accordingly, "even assuming that [these statutes] serve *some* remedial purpose, the Government's argument must fail." *Id.* at 2812 (emphasis added). The civil forfeiture the government seeks to impose constitutes "punishment." Because the government is attempting to exact this form of "punishment" in a separate proceeding from the claimants' criminal trials, this action is barred by the Double Jeopardy Clause.

III.

The Supreme Court's decision in *Austin* will doubtless have a significant effect on the government's manner of proceeding in many cases. Because in the case of statutes like those before us a criminal prosecution and a forfeiture action based on the same offense must now be brought in the same proceeding—that is, the same indictment—the government will often be forced to choose whether to include a criminal forfeiture count in the indictment (and thus forego the favorable burdens it would face in the civil forfeiture proceeding) or to pursue only the civil forfeiture action (and thus forego the opportunity to prosecute the claimants criminally). If, in such cases, the government wishes both to obtain forfeiture and to impose other forms of criminal punishment, it "will have to rely to a much greater extent on criminal forfeiture." Smith, *supra*, ¶ 12.10[2], at 12-131 to 12-132. It is entirely reasonable to put the government to this choice. After *Austin*, the law requires it.

For the foregoing reasons, the judgment of the district court is REVERSED and the case is REMANDED with instructions to dismiss with prejudice.

REVERSED and REMANDED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 93-55947

D.C. No. CV 91-3264-AWT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
$405,089.23 U.S. CURRENCY, et al.,
Defendants.

CHARLES ARLT, JAMES WREN, PAYBACK MINES,
Claimants-Appellants.

ORDER AND DISSENT

Filed May 30, 1995

Before: Cecil F. Poole and Stephen Reinhardt, Circuit Judges, and Jack E. Tanner,* District Judge.

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* Honorable Jack E. Tanner, Senior United States District Judge for the Western District of Washington, sitting by designation.

ORDER

The opinion filed September 6, 1994 is amended as follows:

On Slip op. 10471, please add the following footnote at the end of the text and renumber the footnotes accordingly:

> Our adoption of this categorical approach is also compelled by the Supreme Court's recent decision in *Department of Revenue of Montana v. Kurth Ranch*, 114 S.Ct. 1[9]37 (1994). There, the Supreme Court applied *Austin*'s categorical approach for determining when punishment has been imposed in a Double Jeopardy case arising pursuant to a statute that taxed drug monies. *Id.* at 1948.

All of the panel members have voted to deny the petition for rehearing.

Judge Poole and Judge Reinhardt have voted to reject the suggestion for rehearing en banc and Judge Tanner has so recommended.

The full court was advised of the suggestion for rehearing en banc. A judge of the court requested a vote as to whether to take the case en banc, and a vote was taken. The request failed to secure the affirmative vote of a majority of the active non-recused members of the court.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

RYMER, Circuit Judge, with whom Circuit Judges HALL, WIGGINS, KOZINSKI, O'SCANNLAIN, TROTT and T.G. NELSON join, dissenting from the order rejecting the suggestion for rehearing en banc:

By failing to rehear this case en banc, the court lets stand a decision that "could free hundreds of drug dealers across the western United States." *Why a Major Drug Suspect May Go Free*, S.F. Chron., May 9, 1995, at A1.[1]

The panel held that the government could not convict a drug dealer of trafficking in drugs and then seek civil forfeiture of the proceeds of the illegal transactions. It reasoned that to do so "punishes"—or prosecutes—the dealer twice for the same offense and thus runs afoul of the Double Jeopardy Clause. The flip side of the panel's reasoning is that a drug dealer whose illegally obtained proceeds have previously been seized may not thereafter be prosecuted because he will already have been "punished." This cannot be right.

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[1] As the Chronicle reported:

> Charges against an Oakland man who allegedly ran one of the Bay Area's biggest heroin-smuggling rings may be dropped today as the result of a controversial court ruling that could free hundreds of drug dealers across the western United States.
>
> Pius Ailemen may beat drug trafficking charges in federal court in San Francisco on grounds that a conviction would amount to double jeopardy—authorities have already punished him by seizing his 1991 Alfa Romeo and $4,900 in cash.
>
> The Ailemen case may be the most prominent in California since a U.S. Court of Appeals ruled last year that the government cannot prosecute an alleged drug dealer and separately seize his assets. The ruling has caused hundreds of prisoners to flood the courts with demands for release on double-jeopardy grounds.
>
> "The implications of the decision are staggering," said federal public defender Barry Portman in San Francisco. "If you take this to its logical conclusion, countless people are going to get off."

The Supreme Court has held that the civil forfeiture of contraband is a remedial sanction that does not constitute punishment for double jeopardy purposes. *United States v. One Assortment of 89 Firearms*, 465 U.S. 354 (1984). Proceeds are the functional equivalent of contraband. Yet the panel's opinion writes *89 Firearms* off the books by taking one line in *United States v. Halper*, 490 U.S. 435 (1989), and *Austin v. United States*, 113 S. Ct. 2891 (1993), an *excessive fines* case, out of context and surmising that "the Court changed its collective mind" about *double jeopardy*—despite the fact that the Court itself didn't say that it had. This can't be right, either.

Halper did not involve civil forfeiture, but rather a civil fine under the False Claims Act, 31 U.S.C. §§ 3729-3731. In that context, the Court stated that "a civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment, as we have come to understand the term."[2] 490 U.S. at 448. The Court picked up on this statement in *Austin*, where the issue was whether civil forfeitures of automobiles and real property under 21 U.S.C. §§ 881(a)(4) and (a)(7) are subject to the limitations of the Excessive Fines Clause of the Eighth Amendment. Because the Excessive Fines Clause is implicated whenever a sanction serves at least in part to punish and does not solely

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[2] *Halper* adopted a rule of reason "for the rare case" where "a fixed-penalty provision subjects a prolific but small-gauge offender to a sanction overwhelmingly disproportionate to the damages he has caused." 490 U.S. at 449. Under those circumstances, the defendant is entitled to an accounting of the government's damages and costs to determine if the penalty amounts to a second punishment.

serve a remedial purpose, the Court concluded that instrumentality forfeitures are subject to excessiveness analysis because they are at least partly punishment.

The panel's opinion collapses *Halper* into *Austin*, converting *Halper*'s rule of reason for the "rare" case into a per se rule for the routine case. It also merges the inquiry for excessive fines cases—whether the amount forfeited is partly punishment—into double jeopardy cases, where the issue is whether the amount forfeited is entirely punishment. And, perhaps most critically, the opinion treats *proceeds*, which are forfeitable under § 881(a)(6), like a car or a house used to facilitate a drug offense. This has to be wrong. *89 Firearms*—which *Austin* distinguishes but leaves intact—says otherwise; and so does the Fifth Circuit, with which we are now squarely in conflict. *United States v. Tilley*, 18 F.3d 295, 300 (5th Cir.) (post-*Austin* and post-*Halper*, forfeiture of illegal proceeds cannot be punishment for double jeopardy purposes because it is of property to which the defendant never had a legal right and "it exacts no price in liberty or lawfully derived property"), *cert. denied*, 115 S. Ct. 574 (1994).

If the Supreme Court *has* changed its mind—if instead of being a *remedial* sanction that does not trigger the double jeopardy bar as *89 Firearms* held with respect to contraband, separating a drug trafficker from the proceeds of his trafficking is *punishment* which either bars forfeiture after conviction or prosecution after seizure—it is up to that Court to say so. I question whether it has.[8] However, the

[8] It is unclear where *Department of Revenue v. Kurth Ranch*, 114 S. Ct. 1937 (1994), handed down after the panel's opinion was submitted, fits into the equation. *See, e.g., United States v. Torres*, 28 F.3d 1463 (7th Cir.), (Easterbrook, J., suggesting that *Austin*, *Halper* and *Kurth Ranch* together may require as a practical matter that all forfeitures be initiated through criminal proceedings), *cert. denied*, 115 S. C.t 669 (1994). But for present purposes, it suffices to note that *Kurth Ranch* was a double jeopardy case (involving a tax on possession of marijuana imposed after a criminal penalty had been assessed for the same conduct) that was decided after *Austin*, yet mentioned *Austin* only in passing and then only as holding that a civil forfeiture may violate the Eighth Amendment's proscription against excessive fines. *Kurth Ranch*, 114 S. Ct. at 1945.

panel has read the Court's excessive fines and double jeopardy jurisprudence differently. Given the national importance of the civil forfeiture program and the damage that can be wrought from getting it wrong, I dissent from our failure to go en banc.

APPENDIX C

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 91-3264 AWT (Ex.)

UNITED STATES OF AMERICA,
Plaintiff,

v.

$405,089.23 U.S. CURRENCY; $8,929.93 U.S. CURRENCY; $123,000 U.S. CURRENCY; ONE BELL 47 G-2 HELICOPTER, U.S. Registration Number N59H; STORMY SEAS FOUR (SHRIMP BOAT) official number 2159; ONE PIPER CHEROKEE 6 AIRPLANE; ONE HUNDRED THIRTY-EIGHT (138) SILVER BARS; ONE 1985 JAGUAR, VIN: SAJNV5842FC119348; ONE

1981 WELLCRAFT, VIN: HALLWELT1593G788; ONE 1988 JAGUAR, VIN: SAJHU164JC530324; ONE 1986 PORSCHE, VIN: WPOAA0940GN454897; ONE 1988 JAGUAR, VIN: SAJAV1643JC521364; ONE 1986 CHEVROLET, VIN: 1G8CS18RXG0140-772; ONE 1988 MITSUBISHI, VIN: JA7FL24D9-JP0505914; ONE 1987 NISSAN, VIN: JN6ND11S-3HW033709; ONE 1987 SUZUKI, VIN: 1S4JC51C-2H4154485; ONE 1988 JEEP, VIN: 2BCHV8157-JB523469; ONE 1988 CHEVROLET, VIN: 1GCFC-24KOJZ253793; ONE 1983 CHEVROLET, VIN: 1GCS18B9D8132968,
Defendants.

COMPLAINT FOR FORFEITURE

[21 U.S.C. Section 881(a); 18 U.S.C. Section 981]

For its claim against the defendant properties United States of America ("plaintiff") alleges:

1. This is a civil forfeiture action brought pursuant to 21 U.S.C. Section 881 and 18 U.S.C. Section 981.

2. This Court has jurisdiction under 28 U.S.C. Sections 1345 and 1395.

3. Venue lies in this district pursuant to 28 U.S.C. Section 1395 and 21 U.S.C. § 881(j).

4. The defendant properties are:

a. Security Pacific Bank account number 35-339-081, in the name of JAMES HILL, in the amount of $405,089.23.

b. Bank of America account numbers 01963-04647 in the name of JIM WREN, #01969-04649 in the name of JIM WREN, #01964-04854 in the name of Payback Mines, the total amount equalling $8,929.93.

c. One Bell 47 G-2 Helicopter, United States Registration Number N 59 H, purchased by JIM WREN in the name of Payback Mines on January 20, 1991, for $65,000. WREN paid this amount entirely with cash contained in a briefcase.

d. One boat, the Stormy Seas Four, official number #2159, purchased by JIM WREN in the name of Payback Mines, on or about January 30, 1991, for $51,700 in total. WREN paid this amount with cash contained in a briefcase.

e. One Piper Cherokee 6 Airplane, purchased by JIM WREN in the name Payback Mines on January 7, 1991 for $32,000. WREN paid this amount entirely with U.S. currency.

f. One hundred thirty-eight (138) silver bars, valued at approximately $57,000, seized pursuant to a state search warrant at Mayhill Bail Bonds on March 29, 1991.

g. $123,000 in U.S. currency, seized pursuant to a state search warrant at Mayhill Bail Bonds on March 29, 1991.

h. Eleven (11) automobiles and one (1) boat described below:

	Year	Vehicle	VIN NUMBER	License Plate	Purchase Price
a)	1985	Jaguar	SAJNV5842FC119348	None	$ 9,152.50
b)	1981	Wellcraft	HALLWELT1593G788	1BL3594	$ 6,596.50
c)	1988	Jaguar	SAJHU164JC530324	2HP2587	$21,400.00
d)	1986	Porsche	WPOAAO940GN454897	2NED473	$ 9,418.75
e)	1988	Jaguar	SAJAV1643JC521364	2JJK448	$41,470.00
f)	1986	Chevrolet	1G8CS18RXG0140772	None	$18,737.50
g)	1988	Mitsubishi	JA7FL24D9JP0505914	3L50893	$ 3,721.00
h)	1987	Nissan	JN6ND11S3HW033709	3E65279	$ 3,934.00
i)	1987	Suzuki	1S4JC51C2H4154485	2RCY653	$ 4,040.50
j)	1988	Jeep	2BCHV8157JB523469	1JLR102	$ 5,957.50
k)	1988	Chevrolet	1GCFC24K0JZ253793	None	$ 7,129.00
l)	1988	Chevrolet	1G8CS18B9D8132968	2ALC066	$ 3,721.00

INTRODUCTION

5. CHARLES WESLEY ARLT and his associates, including but not limited to, REGINA WREN, JAMES ELI WREN, JAMES ROCKY HILL, DEANNA MARIE PIERCE, ROBERT KUHNLE, ANITA GAGE and DARYL HOUSE are in the business of purchasing chemicals used to manufacture methamphetamine, including hydriotic acid, muriatic acid and red phosphorous. ARLT has purchased and/or established several business entities which he uses to transact business, including HIGHLAND TOWING, PAYBACK MINES and AAA MINERALS. ARLT and his associates cause the wire-transfer of monies to chemical manufacturing companies for the purchase of chemicals, store the chemicals in storage facilities, distribute and arrange for delivery of the chemicals to persons who manufacture methamphetamine and take custody of the monies generated and used in connection with these activities.

6. ARLT and his associates have attempted to create the appearance that the chemicals they purchased were necessary for mining gold at several gold mines allegedly owned by ARLT in Nevada and California. Our investigation reveals that no such mining operations have occurred.

EVIDENCE OF ILLEGAL ACTIVITIES

7. In or about December, 1989, Charles Wesley Arlt and Russell Higgins purchased hydrochloric acid and four hand pumps at Chem Lab, Incorporated, Placentia, California.

8. On or about February 12, 1990, Deanna Marie Pierce purchased a cashier's check with cash at Texas

Commerce Bank in the amount of $33,000, made payable to Calabrian International, Incorporated (hereinafter "Calabrian"), a chemical manufacturing company in New Jersey.

9. On or about February 20, 1990, Deanna Marie Pierce purchased a cashier's check with cash at Texas Commerce Bank in the amount of $33,159, made payable to Calabrian.

10. On or about February 20, 1990, Deanna Marie Pierce ordered approximately 4,000 pounds of hydriotic acid, on behalf of AAA Minerals Company, from Calabrian, to be delivered to 209 South Friendswood Drive, Friendswood, Texas.

11. On or about February 23, 1990, Deanna Marie Pierce ordered approximately 4,000 pounds of hydriotic acid, on behalf of AAA Minerals Company, from Calabrian, to be delivered to 209 South Friendswood Drive, Friendswood, Texas.

12. On or about March 14, 1990, Deanna Marie Pierce wire-transferred approximately $33,000 from AAA Minerals Company's bank account at Community National Bank in Friendswood, Texas, to Calabrian's bank account at National Westminster Bank, New Jersey.

13. In or about April, 1990, Charles Wesley Arlt purchased and took delivery of approximately 500 pounds of red phosphorous from Great Lakes Chemical Company, Melrose Park, Illinois.

14. On or about April 16, 1990, Deanna Marie Pierce ordered approximately 8,000 pounds of hydriotic acid, on behalf of AAA Minerals, from Calabrian, to be delivered to 209 South Friendswood Drive, Friendswood, Texas.

15. On or about May 2, 1990, Charles Wesley Arlt deposited approximately $65,770 in cash into AAA Minerals Company's bank account at Community National Bank. Charles Wesley Arlt then wire-transferred the funds from the bank account to Calabrian's bank account at National Westminster Bank, New Jersey.

16. On or about June 26, 1990, Charles Wesley Arlt purchased a cashier's check with cash at the Bank of San Bernardino in the amount of $35,000, made payable to AAA Minerals Company.

17. On or about July 3, 1990, Charles Wesley Arlt took delivery of eight 55-gallon barrels of hydriotic acid solution at the Consolidated Freightways terminal in Colton, California. The hydriotic acid solution had been shipped by Calabrian to AAA Minerals Company.

18. On or about July 13, 1990, Charles Wesley Arlt wire-transferred approximately $45,000 to defendant Deanna Marie Pierce's bank account at Texas Commerce Bank.

19. On or about July 13, 1990, Deanna Marie Pierce wire-transferred approximately $34,921.42 from her bank account at Texas Commerce Bank to Calabrian's bank account at National Westminster Bank, New Jersey.

20. On or about July 19, 1990, James Eli Wren took delivery of eight 55-gallon barrels of hydriotic acid solution at the Consolidated Freightways terminal in Colton, California. The hydriodic acid solution had been shipped by Calabrian to AAA Minerals Company.

21. On or about August 1, 1990, Charles Wesley Arlt deposited approximately $39,007 in cash into his bank account at the Bank of San Bernardino. Charles Wesley Arlt then wire-transferred approximately $35,000 to Deanna Marie Pierce's bank account owned at the First Bank of Deerpark.

22. On or about August 1, 1990, Deanna Marie Pierce wire-transferred approximately $34,649 from her bank account at First Bank of Deerpark to Calabrian's bank account, National Westminster Bank, New Jersey.

23. On or about August 1, 1990, Deanna Marie Pierce ordered approximately 4,800 pounds of hydriotic acid solution, on behalf of AAA Minerals Company, from Calabrian, to be delivered to 424-A East Rialto Avenue, San Bernardino, California.

24. On or about August 8, 1990, Charles Wesley Arlt purchased Highland Towing Company, 27110 East Third Street, San Bernardino, California.

25. On or about August 10, 1990, James Eli Wren rented Unit A-19, 1180 East Ninth Street, San Bernardino, California.

26. On or about August 21, 1990, James Eli Wren deposited $10,605 in cash into a bank account at the Bank of San Bernardino. James Eli Wren then wire-transferred approximately $2,975 to Great Lakes Chemical Company's bank account in Melrose Park, Illinois.

27. On or about August 27, 1990, James Eli Wren deposited approximately $71,000 in cash into Charles Wesley Arlt's bank account at the Bank of San Bernardino. James Eli Wren then wire-transferred the funds to Deanna Marie Pierce's bank account at the First Bank of Deerpark.

28. On or about August 27, 1990, Deanna Marie Pierce wire-transferred approximately $68,315.40 to Calabrian's bank account, National Westminster Bank, New Jersey.

29. On or about August 30, 1990, Charles Wesley Arlt purchased approximately 700 pounds of red phosphorous from Great Lakes Chemical Company, Melrose Park, Illinois. Charles Wesley Arlt took delivery of the red phosphorous on that day at a warehouse rented by him, 422 East Rialto Avenue, Unit A, San Bernardino, California.

30. On or about September 5, 1990, James Eli Wren took delivery of sixteen (16) 55-gallon barrels of hydriotic acid solution at the Consolidated Freightways terminal in Colton, California. The hydriotic acid solution had been shipped by Calabrian to AAA Minerals Company.

31. On or about September 14, 1990, Charles Wesley Arlt purchased, with cash, a 160-acre parcel of property in Oceola, Nevada, commonly known as the old Marriott Ranch.

32. On or about October 10, 1990, James Eli Wren deposited $42,600 in cash into defendant Charles Wesley Arlt's bank account at the Bank of San Bernardino. James Eli Wren then wire-transferred approximately $38,000 to Deanna Marie Pierce's bank account at the First Bank of Deerpark.

33. On or about October 10, 1990, Deanna Marie Pierce wire-transferred approximately $37,503 to Calabrian's bank account, National Westminster Bank, New Jersey.

34. On or about October 12, 1990, James Eli Wren took delivery of eight 55-gallon barrels of hydriotic acid solution at the Consolidated Freightways

terminal in Colton, California. The hydriotic acid solution had been shipped by Calabrian to AAA Minerals Company.

35. On or about November 5, 1990, James Eli Wren deposited approximately $40,000 in cash into Charles Wesley Arlt's bank account at the Bank of San Bernardino. James Eli Wren then wire-transferred the funds to Deanna Marie Pierce's bank account at the First Bank of Deerpark.

36. On or about November 5, 1990, Deanna Marie Pierce wire-transferred approximately $36,981 into Calabrian's bank account, National Westminster Bank, New Jersey.

37. On or about November 6, 1990, Charles Wesley Arlt took delivery of eight 55-gallon barrels of hydriotic acid solution at the Consolidated Freightways terminal in Colton, California. The hydriotic acid solution had been shipped by Calabrian to AAA Minerals Company.

38. On or about November 8, 1990, James Eli Wren purchased a cashier's check in the amount of $200,000, in cash, made payable to Charles Wesley Arlt.

39. On or about November 8, 1990, Charles Wesley Arlt endorsed the $200,000 cashier's check purchased by James Eli Wren and personally delivered it to Unibank, New York. Charles Wesley Arlt deposited the funds into his bank account, Unibank, New York. Charles Wesley Arlt instructed Unibank to forward the funds to Unibank, Luxembourg to a bank account controlled by Charles Wesley Arlt, Joseph David Arlt and Leonard Friedman.

40. On or about November 27, 1990, Regina Wren, wife of defendant James Eli Wren, deposited $47,069 in cash into Charles Wesley Arlt's bank account at

the Bank of San Bernardino. Regina Wren then wire-transferred approximately $40,000 to Deanna Marie Pierce's bank account at the First Bank of Deerpark.

41. On or about November 27, 1990, Deanna Marie Pierce wire-transferred approximately $36,981 to Calabrian's bank account, National Westminster Bank, New Jersey.

42. On or about December 2, 1990, James Eli Wren rented Unit A-10, 1180 East Ninth Street, San Bernardino, California.

43. On or about December 3, 1990, Robert Kuhnle took delivery of eight 55-gallon barrels of hydriotic acid solution at the Consolidated Freightways terminal in Colton, California. The hydriotic acid solution had been shipped by Calabrian to AAA Minerals Company.

44. On or about December 2, 1990, Charles Wesley Arlt purchased the following ammunition at a sporting goods store in Ely, Nevada: two boxes of .38 caliber ammunition, four boxes of .44 magnum ammunition, two boxes of .30 caliber carbine ammunition, four boxes of shotgun shells, and two boxes of .380 automatic ammunition.

45. On or about December 14, 1990, James Eli Wren brought $92,000 in cash into the Bank of San Bernardino. James Eli Wren then wire-transferred approximately $80,000 to defendant Deanna Marie Pierce's bank account at the First Bank of Deerpark.

46. On or about December 17, 1990, Deanna Marie Pierce wire-transferred approximately $73,962 to Calabrian International Incorporated's bank account, National Westminster Bank, New Jersey.

47. On or about December 17, 1990, Robert Kuhnle took delivery of twelve (12) 55-gallon barrels

of hydriotic acid solution at the Consolidated Freightways terminal in Colton, California. The hydriotic acid solution had been shipped by Calabrian to AAA Minerals Company.

48. On or about January 25, 1991, James Eli Wren deposited $80,000 in cash into defendant Charles Wesley Arlt's bank account at the Bank of San Bernardino. James Eli Wren then wire-transferred the funds to defendant Deanna Marie Pierce's bank account at the First Bank of Deerpark.

49. On or about January 25, 1991, Deanna Marie Pierce wire-transferred approximately $73,962.88 to Calabrian International Incorporated's bank account, National Westminster Bank, New Jersey.

50. On or about February 5, 1991, Robert Kuhnle took delivery of eight 55-gallon barrels of hydriotic acid solution at the Consolidated Freightways terminal in Colton, California. The hydriotic acid solution had been shipped by Calabrian to AAA Minerals Company.

51. On or about February 9, 1991, Robert Kuhnle took delivery of eight 55-gallon barrels of hydriotic acid solution at the Consolidated Freightways terminal in Colton, California. The hydriotic acid solution had been shipped by Calabrian to AAA Minerals Company.

52. On or about February 12, 1991, James Eli Wren distributed two 55-gallon barrels of hydriotic acid solution, purchased from Calabrian, in the parking lot of the Comfort Inn, San Bernardino, California.

53. On or about February 12, 1991, Deanna Marie Pierce ordered 16 55-gallon containers of hydriotic acid solution from Calabrian on behalf of AAA Minerals Company.

54. On or about February 12, 1991, Charles Wesley Arlt and James Eli Wren deposited approximately $80,000 in cash into a bank account at the Security Pacific National Bank, San Bernardino, California. On that same day, Charles Wesley Arlt and James Eli Wren wire-transfererd those funds to Deanna Marie Pierce's bank account at the First Bank of Deerpark.

55. On or about February 12, 1991, a Juana Velasco, possessed approximately ten (10) pounds of methamphetamine and approximately $40,000 in the parking lot of the Jack and Jill Coffee Shop, located at 1224 Waterman Avenue, San Bernardino, California.

56. On or about February 12, 1991, a Bobby Joe Jones, possessed approximately 125 pounds of methamphetamine, and approximately five (5) 55-gallon containers of hydriotic acid solution, at a storage facility located at 1070 Jersey Boulevard, #640, Rancho Cucamonga, California.

57. On or about February 19, 1990, James Rocky Hill arranged for the delivery of 3,000 pounds of red phosphorous to Daryl House at 56024 Tracy Boulevard, Yucca Valley, California.

58. On or about February 20, 1991, Daryl House took delivery of approximately 3,000 pounds of red phosphorous at his residence located at 56024 Tracy Boulevard, Yucca Valley, California. The red phosphorous was shipped to "Omni Mining" by Jayar-Hoag Chemical in Lake Zurich, Illinois.

59. On or about February 21, 1991, James Eli Wren transported in excess of $123,000 in cash from Security Pacific National Bank, San Bernardino, California, to Mayhill Bail Bonds, San Francisco, California.

60. On or about February 22, 1991, Charles Wesley Arlt purchased a cashier's check, with cash, at the Bank of America in the amount of $200,000. The cashier's check was made payable to Unibank.

61. On or about March 21, 1991, James Rocky Hill possessed approximately $400,000 in his savings account at the Security Pacific National Bank, Rubidoux Branch, 5694 Mission Boulevard, Riverside, California. The $400,000 had been wire-transferred that day to James Rocky Hill's bank account from Charles Wesley Arlt's bank account at Unibank in Luxembourg.

62. On or about March 21, 1991, James Rocky Hill made arrangements with Security Pacific National Bank to withdraw the $400,000 from his savings account in cash on March 29, 1991.

63. On or about March 29, 1991, Daryl House possessed recipes detailing methods of manufacturing methamphetamine at his residence located on Tracy Boulevard in Yucca Valley, California.

64. On or about March 29, 1991, Charles Wesley Arlt and Daryl House possessed a recipe detailing a method of manufacturing methamphetamine at Charles Wesley Arlt's ranch house, located at the Old Marriott Ranch, Oceola, Nevada.

65. On or about March 29, 1991, Charles Wesley Arlt and Daryl House possessed approximately forty-one (41) weapons at Charles Wesley Arlt's ranch house, located at the Old Marriott Ranch, Oceola, Nevada.

66. On or about March 29, 1991, Charles Wesley Arlt and Daryl House possessed hydriotic acid at Charles Wesley Arlt's ranch house, located at the Old Marriott Ranch, Oceola, Nevada.

INVESTIGATION RE PROPERTY TO BE FORFEITED

SECURITY PACIFIC BANK ACCOUNT #35-339-081, $405,089.23

67. Phillip Mullins learned from Jim Hensley, the branch manager at the Rubidoux Security Pacific Bank, that he had a discussion with JIM HILL on March 28, 1991. On that day JIM HILL requested that $200,000 be wire transferred from his account, account number #35-339-081 to the account of Payback Mines at Bank of America, account #0196404854. JIM HILL also told Hensley that he wanted to have $200,000 in currency on March 29, 1991. HILL had previously told Hensley that he wanted to withdraw $400,000 in currency on March 29, 1991 to complete a deal for the purchase of precious metals.

68. In a post-arrest interview on March 29, 1991 with JAMES HILL he admitted having knowledge that ARLT was trying to hide his money by putting it in HILL's account. ARLT told HILL he did not want any assets placed in his own name, because he was aware that he was being investigated by a multi-agency task force for narcotics violations. HILL also stated that based on his background and training as a law enforcement officer he suspected that all of ARLT's cash was not from legal sources. On March 29, 1991, I served a federal search warrant on Security Pacific Bank demanding that the account be frozen and that the funds be disbursed to the Federal government when demanded.

BANK OF AMERICA ACCOUNT NUMBERS 01963-04647; 01969-40649; 01964-04854

69. I learned from Lynne Buhunen of Bank of America that two accounts for Highland Towing were opened on February 20, 1991 showing the signature authority to be JIM WREN, REGINA WREN, CHARLES W. ARLT and JAMES HILL. The account numbers are #01963-04647 and #01969-04649. On March 28, 1991, JIM and REGINA WREN opened an account in the names of Payback Mines. Only JIM and REGINA WREN had signature authority on this account. On March 29, 1991 the total of all balances in the three accounts was $8,929.23. This amount was paid over to the San Bernardino Sheriff's Department with a cashier's check pursuant to a state seizure warrant.

BELL 47 HELICOPTER—U.S. REGISTRATION NUMBER—N 59 H

70. On April 4, 1991 Mullins spoke with Edward Mauldin of Sundance Helicopters in Lancaster, California. Mr. Mauldin provided the details involving JIM WREN's purchase of one Bell 47 Helicopter. On Sunday, January 20, 1991, a man who introduced himself as JIM WREN came to Mauldin's place of business to purchase a helicopter. After taking JIM WREN and an associate of WREN's for a test flight, JIM WREN agreed to purchase the helicopter for $65,000. WREN presented Mr. Mauldin with $65,000 in U.S. currency, which was contained in WREN's briefcase. Most of the cash was in $100 bills with some in $50 and $20 denominations.

71. WREN requested that the helicopter be registered in the name of Payback Mines. WREN also

signed the bill of sale, signing as the vice president of Payback Mines. Mr. Mauldin witnessed WREN's signature and mailed the completed bill of sale to FAA.

72. WREN informed Mauldin that he and his partners were involved in a gold mining operation. He explained that they deal in cash because that was the method in which the assayers paid them for the gold. WREN indicated that everybody in the gold business deals in cash. This helicopter was seized pursuant to a state seizure warrant on March 29, 1991.

STORMY SEAS FOUR (SHRIMP BOAT)—OFFICIAL NUMBER 2159

73. On April 3, 1991, Mullins spoke with Buck Heard, Sales Manager of the Rowell Realty and Auction Company regarding the purchase by JIM WREN of the Stormy Seas Four fishing boat. On or around January 30, 1991, JIM WREN purchased this boat at an auction for $51,700. The boat is described as a 73-foot shrimp trawler with a 3208 Cat engine and KW generator. The boat was also equipped with a depth recorder, VHF radio and auto pilot. The official number 2159 is burned into the hull of the boat. The boat was manufactured by the DESCO Ship Builders in St. Augustine, Florida.

74. WREN paid for the Stormy Seas Four with $51,700 in U.S. currency contained in a briefcase. Most of the bills were in small denominations. While counting the money one of WREN's associates, earlier identified as his son, pulled out a gun and laid it on the table for an unstated reason. The boat's name was changed to "Mariah." The boat was in dry dock for repairs in Biloxi, Mississippi immediately before

being seized by federal agents of the IRS. The seizure was accomplished pursuant to a seizure warrant obtained in the Federal Judicial District of Mississippi.

PIPER CHEROKEE 6 AIRPLANE

75. On April 3, 1991, Mullins spoke with Larry Oyers, owner of Western Cardinal, Inc., a company in the business of selling and renting aircraft, regarding the purchase by JIM WREN of a Piper Cherokee 6 airplane. On or about Sunday, December 30, 1990, a JIM WREN and CHARLES ARLT came to Oyers' business to look at this aircraft. On or about Monday, January 7, 1991, Oyers received a telephone call from JIM WREN, who stated that ARLT wanted to buy the airplane on that day. WREN and Oyers met at Redlands Aviation on January 7, 1991. After an inspection of the airplane the two drove to Highland Towing Company. After agreeing on a price of $32,000, WREN presented Oyers with a brown paper bag containing $32,000 in U.S. currency. According to Oyers, most of the cash was in small denominations.

76. WREN requested that the airplane be registered in the name of Payback Mines. Oyers witnessed WREN sign the bill of sale as vice president of Payback Mines. Oyers stated that during the several hours that he spent with JIM WREN they engaged in a conversation about the gold mining operations that WREN and ARLT were involved in. WREN told Oyers that ARLT was a prospector who had lived for many years in the Mojave Desert. WREN also stated that ARLT had developed a process to remove gold from trailings at gold mine sites.

WREN also indicated that they were using this process on loads of gold trailings at a mine they owned in Nevada. This airplane was seized pursuant to state seizure warrant executed on March 29, 1991.

SILVER BARS AND $123,000 IN U.S. CURRENCY

77. On March 29, 1991 a state search warrant was executed at Mayhill Bail Bonds, 400 East Rialto, San Bernardino, CA. Approximately 140 silver bars were seized during the search. The total weight of these bars is approximately 13,479 ounces, having a total value of approximately $59,040. In addition, a cardboard box containing $123,000 in U.S. currency was seized pursuant to this search warrant.

78. An elderly female who identified herself as Millie Mayhill responded to the officers' service of the search warrant. Millie Mayhill was read her Miranda warning and she consented to a taped discussion. During this taped conversation with Millie Mayhill, Mayhill advised that her brother is JIM WREN. Mayhill explained that in January 1991 JIM WREN brought silver bars and a box into her place of business, Mayhill Bail Bonds, and placed these items in the back room, which she described as the "safe room."

79. Millie Mayhill stated that she had known "FAT CHUCK", whose real name is CHARLES ARLT, for three years as ARLT would come to her business to bail a lot of his people out of jail. Mayhill also stated that she had heard from her son and from ARLT that ARLT owned a ranch in Nevada, an airplane, a helicopter and also a ship that she believed was docked in Mississippi.

ELEVEN AUTOMOBILES AND ONE BOAT

80. On February 1, 1991, Reserve Deputy Eroe was working at United Auto Auction in Upland, California. WREN purchased eleven cars and one boat from the auction on that date, for a total of approximately $105,000. WREN paid cash for the cars, pulling the money from a paper bag that appeared to have been buried. A tow truck registered to Highland Towing transported all of the cars from the auction. WREN registered all of the cars to Pay Back Mines at 27110 East Third Street, the address of Highland Towing.

81. ARLT was with WREN when he made the above-described purchase. WREN was carrying a handgun, and when questioned by Reserve Deputy Eroe, WREN displayed a badge from the "Department of Defense" and an identification card from the same. Reserve Deputy Eroe assumed that the badge and identification card were legitimate.

82. Rick Martin, an employee of United Auto Auction, also recalled this above-described transaction with WREN and ARLT. Mr. Martin said that ARLT signed the Cash Transaction Report, indicating that he was the President of Pay Back Mines. ARLT had WREN signed the Department of Motor Vehicle documents for the vehicles. Mr. Martin recalled that the cash used to purchase the vehicles was in twenties and hundreds, and was inside a very dirty brown paper bag. ARLT told Mr. Martin that he operated a mining business. Mr. Martin felt that ARLT was directing the transaction as WREN filled out some documents and a female that was with them filled out other documents.

DATED: June 17, 1991

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APPENDIX D

[Filed Feb. 10, 1992]

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

No. CV 91-3264 AWT

UNITED STATES OF AMERICA, PLAINTIFF,

v.

$405,089.23 U.S. CURRENCY, *et al.*, DEFENDANT.
JAMES WREN, CHARLES ARLT, PAYBACK MINES, CLAIMANTS.

PARTIES' RESPONSE TO ORDER TO SHOW CAUSE

The above-named parties herein submit their joint response to the Court's Order to Show Cause.

On June 17, 1991 plaintiff filed this civil forfeiture action. After providing the above-named claimants with several extensions of time to file a Verified Claim and Answer in this action, claimant Payback Mines served plaintiff with *unverified* claims to the defendant properties on or around October 17, 1991. On October 29, 1991, plaintiff gave notice by letter that the claims filed were insufficient in that they do not comply with Rule C(6), Supplemental Rules for Certain Admiralty and Maritime Claims. Plaintiff therein gave notice that unless claimant filed claims that complied with Rule C(6), plaintiff would seek to strike the claims already filed.

Plaintiff and counsel for claimants have discussed, however, that a stay of this action would be appropriate until the end of the criminal case against, among others, Charles Arlt and James Wren. This case is now being tried in the courtroom of the Honorable Dickran Tevrizian. The criminal trial is expected to be concluded within the next three (3) weeks.

The parties intend to resolve the matter of the insufficient claims by February 17, 1992. If claimant complies with Rule C(6), the parties will file the Joint Report of Early Meeting by February 24, 1992. The parties will indicate in the Joint Report the status of the criminal trial and whether a stay of this civil forfeiture action will be reqeusted.

DATED: February 10, 1992.

LOURDES G. BAIRD
United States Attorney
LEON W. WEIDMAN
Assistant United States Attorney
Chief, Civil Division
MANUEL A. MEDRANO
Assistant United States Attorney
Chief, Asset Forfeiture Section

/s/ Mark A. Feldman
MARK A. FELDMAN
Assistant United States Attorney

Attorneys for plaintiff

DATED: February 10, 1992.

TODD W. MCWHORTER, ESQ.

/s/ Todd W. McWhorter
TODD W. MCWHORTER
[Executed by MAF per telephonic authorization]

Attorney for James Wren

DATED: February 10, 1992.

CARMINE J. COLUCCI, ESQ.

/s/ Carmine J. Colucci
CARMINE J. COLUCCI
[Executed by MAF per telephonic authorization]

Attorney for Charles Arlt, Payback Mines

APPENDIX E

[Filed Mar. 29, 1993]

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

No. CV 91-3264 AWT(EEx)

UNITED STATES OF AMERICA,
Plaintiff,

v.

$405,089.23 U.S. CURRENCY; $8,929.93 U.S. CURRENCY; $123,000 U.S. CURRENCY; ONE BELL 47 G-2 HELICOPTER, U.S. Registration Number N59H;

STORMY SEAS FOUR (SHRIMP BOAT) official number 2159; ONE PIPER CHEROKEE 6 AIRPLANE; ONE HUNDRED THIRTY-EIGHT (138) SILVER BARS; ONE 1985 JAGUAR, VIN: SAJNV5842FC119348; ONE 1981 WELLCRAFT, VIN: HALLWELT1593G788; ONE 1988 JAGUAR, VIN: SAJHU164JC530324; ONE 1986 PORSCHE, VIN: WPOAA0940GN454897; ONE 1988 JAGUAR, VIN: SAJAV1643JC521364; ONE 1986 CHEVROLET, VIN: 1G8CS18RXG0140-772; ONE 1988 MITSUBISHI, VIN: JA7FL24D9-JP0505914; ONE 1987 NISSAN, VIN: JN6ND11S-3HW033709; ONE 1987 SUZUKI, VIN: 1S4JC51C-2H4154485; ONE 1988 JEEP, VIN: 2BCHV8157-JB523469; ONE 1988 CHEVROLET, VIN: 1GCFC-24KOJZ253793; ONE 1983 CHEVROLET, VIN: 1GCS18B9D8132968,

Defendants.

Date: December 28, 1992

Time: 10:00 a.m.

Place: Courtroom of the
Honorable A. Wallace
Tashima

STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW

Plaintiff, United States of America submits the following statement of uncontroverted material facts and conclusions of law pursuant to Central District of California Local Rule 7.14.1. These include every essential element to entitle plaintiff to a judgment as

a matter of law. All references to exhibits are those exhibits supporting plaintiff's memorandum of points and authorities.

I

STATEMENT OF UNCONTROVERTED FACTS

1. This *in rem* forfeiture action was brought against the defendant properties pursuant to Section 881 of Title 21 and Section 981 of Title 18 of the United States Code. Specifically, the government contends that the defendant properties are forfeitable because they represent items traceable to illegal narcotics activities in violation of 21 U.S.C. 881(a)(6) and because the defendants were involved in financial transactions in violation of 18 U.S.C. §§ 981 and 1956.

2. Claims have been filed in this action by Charles Arlt ("Arlt"), James Wren ("Wren") and Payback Mines. Arlt and his associates, including but not limited to, Wren, James Rocky Hill ("Hill"), Deanna Marie Pierce ("Pierce"), Robert Kuhnle ("Kuhnle"), Anita Gage ("Gage") and Daryl House ("House") were in the business of purchasing chemicals used to manufacture methamphetamine. See Exh. 1 at 2-4.

4. Arlt and his associates purchased cashier's checks, transferred funds and caused the wire-transfer of monies to chemical manufacturing companies for the purchase of chemicals used in the manufacture of methamphetamine.[1] Exh. 1 at ¶¶ 8,

---

[1] All references are to paragraphs ("Overt Acts") contained in the First Superseding Indictment ("Indictment") and the Count in the Indictment associated with the specific Overt Act. A certified copy of which is attached as Exhibit 1.

12, 15, 18, 19, 21 (and Count 18), 23, 26 (and Count 10), 26, 27 (and Count 3), 31 (and Count 11), 31, 32 (and Count 4), 36, 37 (and Count 19), 39, 40 (and Count 5), 46, 47 (and Count 13), 48 (and Count 6), 51, 52 (and Count 14), 53 (and Count 7), 55 (and Count 20), 67 (and Count 15), 68 (and Count 8), 71, 72 (and Count 16), 73 (and Count 9), 78, 79 (and Count 17), 85 (and Count 21), 86, 87 (and Count 22).

5. Arlt and his associates made direct purchases of and ordered chemicals used in the manufacture of methamphetamine. See Exh. 1 at ¶¶ 1-6, 11, 14, 17, 22, 25, 29, 35, 38, 45, 50, 60, 62, 70, 77 (and Count 1).

6. Arlt and his associates stored the chemicals in storage facilities, distributed and arranged for and took delivery of the chemicals. Exh. 1 at ¶¶ 9, 10, 13, 16, 20, 24, 28, 42, 43, 49, 54, 64, 69, 74, 75, 76, 81, 83, 91, 92 (and Count 1).

7. Arlt purchased and/or established several business entities which he used to transact business, including Highland Towing, Inc., AAA Minerals and claimant Payback Mines. Exh. 3 at 5, ¶ 1.

8. Arlt and his associates attempted to create the appearance that the chemicals they purchased were necessary for mining gold at several gold mines allegedly owned by Arlt in Nevada and California. No such mining operations in fact existed. Exh. 3 at 5, ¶ 2.

9. Arlt, Wren and Hill were convicted on each and every count alleged against them in the Indictment. See Exhs. 1, 2. On March 27, 1992, Arlt was convicted of nineteen counts of conspiracy to aid and abet the manufacture of methamphetamine, conspiracy to launder monetary instruments and of

money laundering in violation of 18 U.S.C. § 1956 (a)(1), and Wren was convicted of fifteen counts of the same criminal violations. *Id.* In addition, James Hill was convicted of conspiracy to manufacture methamphetamine and of laundering approximately $400,000, in violation of 18 U.S.C. § 1956(a)(1). *Id.* This act of laundering involved the $405,089.23 that is the first defendant listed in the caption in this case.

10. Arlt, Wren and Hill were convicted of laundering approximately $1,630,000 from July 1990 through March 1991.

11. Count 22 of the Indictment charged Hill with attempting to launder approximately $400,000. Hill was convicted of attempting to launder these funds. See Exhs. 1, 2; Exh. 3 at ¶¶ 115, 116.

12. On March 29, 1991 a state search warrant was executed at Mayhill Bail Bonds, 400 East Rialto, San Bernardino, CA. A cardboard box containing $123,000 in U.S. currency was seized pursuant to this search warrant. See Exh. 3 at ¶ 125.

13. Count 2 of the Indictment, in Paragraph 84, accused Wren of transporting $123,000 from Security Pacific to Mayhill Bail Bonds. See Exh. 1 at ¶ 84.

14. Wren was convicted on Count 2 of the Indictment. See Exhs. 1, 2.

15. On March 29, 1991 a state search warrant was executed at Mayhill Bail Bonds, 400 East Rialto, San Bernardino, CA. See Exh. 3 at ¶ 125. In addition to the above-mentioned $123,000, 138 silver bars were seized during the search. *Id.* The total weight of these bars is approximately 13,479 ounces, having a total value of approximately $59,040. *Id.*

16. An elderly female who identified herself as Millie Mayhill responded to the officers' service of the search warrant. See Exh. 3 at ¶ 126. Millie Mayhill

("Mayhill") was read her Miranda warning and she consented to a taped discussion. *Id.* During this taped conversation with Mayhill, Mayhill advised that her brother is Jim Wren. *Id.* Mayhill explained that in January 1991 Wren brought silver bars and a box into her place of business, Mayhill Bail Bonds, and placed these items in the back room, which she described as the "safe room." *Id.*

17. Mayhill stated that she had known "FAT CHUCK," whose real name is Charles Arlt, for three years as Arlt would come to her business to bail a lot of his people out of jail. See Exh. 3 at ¶ 127.

18. Two accounts for Highland Towing were opened on February 20, 1991 showing the signature authority to be Arlt, Wren and Hill. See Exh. 3 at ¶ 117. Highland Towing was a business entity owned and controlled by Arlt. See Exh. 3 at ¶ 90.

19. On March 28, 1991, Wren opened a third account in the name of Payback Mines, which was a business entity owned by Arlt. See Exh. 3 at ¶¶ 117, 109. Only Jim and Regina Wren had signature authority on this account. *Id.* This account, no. 01964-04854, was supposed to receive the $405,089.23 that was the subject of Hill's money laundering conviction under Count 22. See Exh. 3 at ¶¶ 115, 117.

20. On Sunday, January 20, 1991, a man who introduced himself as Wren came to Edward Mauldin's place of business, named Sundance Helicopters, to purchase a helicopter. See Exh. 3 at ¶ 118. After taking Wren and an associate of Wren's for a test flight, Wren agreed to purchase the helicopter for $65,000. *Id.* Wren presented Mr. Mauldin with $65,000 in U.S. currency, which was contained in Wren's briefcase. *Id.* Most of the cash was in $100

bills with some in $50 and $20 denominations. *Id.*; Exh. 4.

21. Wren requested that the helicopter be registered in the name of Payback Mines. See Exh. 3 at ¶ 119. Wren also signed the bill of sale, signing as the vice president of Payback Mines. *Id.* Mr. Mauldin witnessed Wren's signature and mailed the completed bill of sale to the FAA. *Id.*

22. On or around January 30, 1991, Wren purchased this boat at an auction for $51,700. Exh. 3 at 121.

23. Wren paid for the Stormy Seas Four with $51,700 in U.S. currency contained in a briefcase. Exh. 3 at ¶ 122. Most of the bills were in small denominations. *Id.* While counting the money one of Wren's associates, earlier identified as his son, pulled out a gun and laid it on the table for an unstated reason. *Id.* The boat was in dry dock for repairs in Biloxi, Mississippi immediately before being seized by federal agents of the IRS. *Id.*

24. On or about Sunday, December 30, 1990, Wren and Arlt came to Larry Oyers' business, named Western Cardinal, Inc., to look at a Piper Cherokee 6 airplane. See Exh. 3 at ¶ 123. On or about Monday, January 7, 1991, Oyers received a telephone call from Wren, who stated that Arlt wanted to buy the airplane on that day. *Id.* Wren and Oyers met at Redlands Aviation on January 7, 1991. *Id.* After an inspection of the airplane the two drove to Highland Towing Company. *Id.* After agreeing on a price of $32,000, Wren presented Oyers with a brown paper bag containing $32,000 in U.S. currency. *Id.* According to Oyers, most of the cash was in small denominations. *Id.*

25. Wren requested that the airplane be registered in the name of Payback Mines. See Exh. 3 at ¶ 124. Oyers witnessed Wren sign the bill of sale as vice president of Payback Mines. *Id.*

26. On February 1, 1991, Wren purchased eleven cars and one boat from an auction, for a total of approximately $105,000. See Exh. 3 at ¶ 128; Exh. 5. Wren paid cash for the cars, pulling the money from a paper bag that appeared to have been buried. See Exh. 3 at ¶ 128; Exh. 5 at 1 (Arlt executed Form 8300 as authorized to sign on behalf of Payback Mines). Wren registered all of the cars to Payback Mines at 27110 East Third Street, the address of Highland Towing. See Exh. 3 at ¶ 128.

27. Arlt was with Wren when he made the above-described purchase. See Exh. 3 at ¶ 129.

28. Rick Martin, an employee of United Auto Auction, also recalled this above-described transaction with Wren and Arlt. See Exh. 3 at ¶ 130. Mr. Martin said that Arlt signed the Cash Transaction Report, indicating that he was the President of Pay Back Mines. *Id.*; See Exh. 5 at 1. Arlt had Wren sign the Department of Motor Vehicle documents for the vehicles. *Id.* Mr. Martin recalled that the cash used to purchase the vehicles was in twenties and hundreds, and was inside a very dirty brown paper bag. *Id.* Mr. Martin felt that Arlt was directing the transaction as Wren filled out some documents and a female that was with them filled out other documents. *Id.*

29. On or about May 2, 1991, each of the defendant properties was seized pursuant to seizure warrants. See Exh. 6, a copy of each of the 20 seizure warrants.

III

STATEMENT OF CONCLUSIONS OF LAW

30. Summary judgment shall be granted where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Thus, the government must first establish probable cause to believe that the defendant properties are forfeitable.

31. Unless claimants then are able to establish that the defendant properties were derived from a legitimate source, rather than from proceeds of claimants' methamphetamine activities, a summary judgment of forfeiture is appropriate.

> [T]he summary judgment procedures under Rule 56, Fed.R.Civ.P., must necessarily be construed in the light of the statutory law of forfeitures, and particularly the procedural requirements set forth therein. . . .

United States v. $5,644,540 U.S. Currency, 799 F.2d 1357, 1361 (9th Cir. 1986) (citing *United States v. One 56-Foot Motor Yacht Named Tahuna*, 702 F.2d 1276, 1281 (9th Cir. 1983)).

32. Title 21 section 881(a)(6) of the United States Code provides for forfeiture to the United States of the following:

> (a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:
>
> * * * * *
>
> (6) All moneys, negotiable instruments, securities, or other things of value furnished or

> intended to be furnished by any person in exchange for a controlled substance in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

33. The burden of proof in civil forfeiture actions is set forth in 19 U.S.C. § 1615. *United States of America v. $5,644,540 in U.S. Currency*, 799 F.2d 1357, 1362 (9th Cir. 1986). Section 1615 provides that to succeed in an action for forfeiture it is the plaintiff who has the initial burden. To satisfy this burden plaintiff must establish probable cause. In a civil forfeiture action under 21 U.S.C. § 881(a) the "government initially must demonstrate probable cause to believe that the property was involved in an illegal drug-related transaction." *Id.* at 1362; *United States of America v. Dickerson*, 873 F.2d 1181, 1184 (9th Cir. 1988).

34. Probable cause is a question of law to be decided by the court. *United States of America v. $93,685.61 in U.S. Currency*, 730 F.2d 571, 572 (9th Cir. 1984; *United States of America v. Padilla*, 888 F.2d 642, 643 (9th Cir. 1989).

35. It is well established that the standard for showing probable cause in a civil forfeiture case is no greater than for a search warrant. *United States of America v. One 56-Foot Yacht Named the Tahuna*, 702 F.2d 1276, 1281 (9th Cir. 1984). Plaintiff must

show that there is *more than a mere suspicion* that the real property *is connected* to illegal drug transactions. "Probable cause is shown if the government produces 'less than prima facie proof but more than mere suspicion.'" *United States of America v. $83,310,78 in U.S. Currency*, 851 F.2d 1231, 1235 (9th Cir. 1988) (citation omitted).

36. In *$83,310.78 in U.S. Currency*, the court upheld a judgment of forfeiture after concluding that the "government had shown that there was *more than a mere suspicion that the seized currency was connected to an illegal drug transaction.*" *Id.* at 1235 (emphasis added).

37. To make its probable cause showing, plaintiff must offer evidence that is "adequate and sufficiently reliable to warrant the belief by a reasonable person" that the defendant real property was connected to drug transactions. *United States of America v. One 56-Foot Yacht Named the Tahuna*, 702 F.2d 1276, 1282 (9th Cir. 1983).

38. Plaintiff may make its probable cause showing by relying upon circumstantial evidence. *United States of America v. $93,685.61 in U.S. Currency*, 730 F.2d 571, 572 (9th Cir. 1984) *cert. denied* 469 U.S. 831, 105 S.Ct. 119, 83 L.Ed.2d 61 (1984). Furthermore, such evidence need not be admissible at trial if the court deems it adequate and sufficiently reliable. *United States of America v. 1982 Yukon Delta Houseboat*, 774 F.2d 1432, 1434 (9th Cir. 1985).[2] "The question of probable cause depends not

---

[2] Accordingly, reliance on the Affidavit of Special Agent Mullins, the Indictment and Criminal Minutes, and other documentary evidence is appropriate. *United States v. One 56-Foot Yacht Named Tahuna*, 702 F.2d 1276, 1282-83 (9th Cir. 1983).

upon the admissibility of the evidence upon which the government relies but only upon the legal sufficiency and reliability of the evidence." *Tahuna*, 702 F.2d at 1283.

39. In deciding whether the United States has established probable cause, the Court must look to the aggregate of facts. *United States v. $83,310.78 in U.S. Currency*, 851 F.2d 1231 (9th Cir. 1988); *$5,644,540 U.S. Currency*, 799 F.2d 1362.

> Probable cause is shown if 'the aggregate of facts gives rise to more than mere suspicion that the property was exchanged for or intended to be exchanged for drugs.'

$83,310.78, 851 F.2d at 1235 (citing *$5,644,540 U.S. Currency.*)

40. In *United States v. $29,959 U.S. Currency*, 931 F.2d 549 (9th Cir. 1991), the court held that possession of large amounts of currency is strong evidence of drug trafficking.

> Cash amounting to $29,959 is an 'extremely large amount' to be kept in the home. . . . This alone is 'strong evidence that the money was furnished or intended to be furnished in return for drugs.

41. Similarly, the use of large amounts of cash to purchase properties is evidence of drug trafficking and that drug proceeds were used to purchase such properties. See *United States v. Thomas*, 913 F.2d 1111, 1115 (4th Cir. 1990).

42. The convictions of Arlt, Wren and Hill of conspiracy to aid and abet the manufacture of methamphetamine, conspiracy to launder monetary instruments and money laundering are sufficient for probable cause by themselves. Nevertheless, with each of

the defendant properties, other than the $405,089.23 and the silver bars, there is additional evidence that clearly establishes probable cause.

43. With regard to the $405,089.23, James Hill has already been convicted of attempting to launder this money. See Exhs. 1, 2. This conviction, under 18 U.S.C. § 1956(a)(1), required that the defendant money was obtained from an unlawful activity, that being methamphetamine trafficking.

44. Wren was convicted on Count 2 of the Indictment, which incorporates Paragraph 84, relating to the $123,000 that Wren transported to Mayhill Bail Bonds. Furthermore, the extremely large amount of currency itself bolsters the existence of probable cause.

45. The $8,929.93 seized from three bank accounts, is also forfeitable. Two of the accounts were in the name of Highland Towing. Only Arlt, Wren and Hill had signature authority on these accounts, indicating that the money was a proceed of their methamphetamine trafficking. Furthermore, Highland Towing was a company owned by Arlt. The third account was opened in the name of Payback Mines, another company owned by Arlt. The fact that this account was also in the name of one of Arlt's companies, also supports the finding of probable cause. See Exh. 3 at ¶ 117.

46. Probable cause for the Bell 47 Helicopter is further supported by the fact that it was purchased with cash for $65,000. Furthermore, the aircraft was placed in the name of Arlt's business, Payback Mines. See Exh. 3 at ¶ 119; See Exh. 5 at 1 (bottom of document indicates that Arlt signed on behalf of Payback Mines.) See Exh. at ¶¶ 118-119.

47. Forfeiture of the Stormy Seas Four shrimp boat is further supported by the fact that it was purchased with $51,700 in currency. Like the helicopter, this fishing vessel was placed in the name of Arlt's business, Payback Mines. See Exh. 3 at ¶ 122.

48. Probable cause for the Piper 6 Cherokee Airplane is bolstered by the purchase of the aircraft with $32,000 in currency. Like the above two properties, the airplane also was placed in the name of Arlt's business, Payback Mines. See Exh. at ¶¶ 123-124.

49. The eleven automobiles and one boat were purchased with $105,000 in cash at an auction. Like the above helicopter, fishing vessel and airplane, the eleven vehicles and one boat also were placed in the name of Arlt's business, Payback Mines. See Exh. at ¶¶ 128-130.

50. Plaintiff also alleges that the defendant properties are forfeitable under 18 U.S.C. § 981(a)(1). Pursuant to section 981(a)(1)(A), if the defendant properties were "involved in" or are traceable to properties involved in violations of 18 U.S.C. § 1956 (a)(1)(B), such properties are forfeitable to the government.

51. The defendant properties were "involved in" or traceable to violations of 18 U.S.C. § 1956(a)(1) (B) if: the defendant properties were derived from a "specified unlawful activity", namely, the manufacture and sale of methamphetamine; and, the defendants were involved in financial transactions designed to conceal the nature, location, source, ownership, or control of the funds.

52. Title 18 section 981(a)(1)(A) of the United States Code provides for forfeiture to the United States of the following:

> Except as provided in paragraph (2), the following property is subject to forfeiture to the United States:
>
> (A) Any property, real or personal, involved in a transaction or attempted transaction in violation of section 5313(a) or 5234 of title 31, or *of section 1956* or 1957 of this title, or any property traceable to such property.

Id. (emphasis added).

53. Title 18, section 1956(a)(1) defines money laundering as follows:

> Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—
>
> (B) knowing that the transaction is designed in whole or in part—
>
> (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity . . .

54. The term "specified unlawful activity" includes the violation of the federal narcotics laws.[8]

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[8] The term "specified unlawful activity" is defined in section 1956(c)(7)(A), and includes "any act or activity constituting an offense listed in § 1961(1) of this title . . ." Section 1961(1)(D) includes "any offense involving . . . the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States."

55. As stated above, claimants were convicted of numerous counts of conspiracy to manufacture methamphetamine, conspiracy to launder monetary instruments and money laundering.

56. To be entitled to summary judgment, the government must establish probable cause to believe that the defendant properties were "involved in" or are traceable to money laundering violations; that each was derived from a "specified unlawful activity", methamphetamine activities for instance, and that each of the defendant properties was involved in financial transactions designed to conceal the location, source, ownership and control of that defendant property. *United States v. All Monies*, 754 F. Supp. 1467, 1471 (D. Haw. 1991); *United States v. Padilla*, 888 F.2d 642, 643-44 (9th Cir. 1989).

57. As stated above, to make its probable cause showing, plaintiff must offer evidence that is "adequate and sufficiently reliable to warrant the belief by a reasonable person" that the defendant properties represent the proceeds of claimant's methamphetamine activities. See *United States of America v. One 56-Foot Yacht Named the Tahuna*, 702 F.2d 1276, 1282 (9th Cir. 1983); *United States v. All Monies*, 754 F. Supp. 1467, 1471 (D. Haw. 1991). The standard for establishing probable cause is more than a mere suspicion but less than a preponderance of the evidence. *All Monies*, 754 F. Supp. at 1471; *United States v. Padilla*, 888 F.2d 642, 643-44 (9th Cir. 1989).

58. The defendant properties were involved in financial transactions designed to conceal the location, source or the ownership of the defendant properties or were traceable to such transactions.

59. With regard to the $405,089.23, James Hill has already been convicted of attempting to launder this money. See Exhs. 1, 2. Therefore, it is automatically forfeitable.

60. Wren was convicted of conspiracy to commit laundering in Count 2 of the indictment, which incorporates Paragraph 84. Paragraph 84 alleged that Wren transported $123,000 from Security Pacific Bank to Mayhill Bail Bonds.

61. The $8,929.93 seized from three bank accounts, is also forfeitable. Two of the accounts were in the name of Highland Towing. Only Arlt, Wren and Hill had signature authority on this account, which supports the conclusion that the money was "involved in" or traceable to their methamphetamine activities. Furthermore, Highland Towing was a company owned by Arlt. The third account was opened in the name of Payback Mines, another company owned by Arlt. This fact also supports the conclusion that the funds were traceable to methamphetamine activities. Therefore, it also supports the finding of probable cause. See Exh. 3 at ¶ 117.

62. The Bell 47 Helicopter was involved in or is traceable to a $65,000 cash transaction, designed to conceal the source, ownership, and control of the property. See Exh. 3 at ¶ 118.

63. The Stormp Seas Four shrimp boat was involved in or is traceable to a $51,700 cash transaction, designed to conceal the source, ownership, and control of the property. See Exh. 3 at ¶ 122.

64. The Piper 6 Cherokee Airplane was involved in or traceable to a $32,000 cash transaction, designed to conceal the source, ownership, and control of the property. See Exh. 3 at ¶ 123.

65. The eleven automobiles and one boat were involved in or are traceable to a $105,000 cash transaction designed to conceal the source, ownership, and control of the properties. See Exh. 3 at ¶ 129.

66. As stated above, the government seized three bank accounts containing funds involved in financial transactions. Although there are very few reported opinions interpreting Title 18 section 981(a)(1), property used to "facilitate" illegal money laundering, including a bank account, is forfeitable to the government.

67. This interpretation of section 981(a)(1)(A) is made clear by the legislative history of the statute.

> [T]he term "property involved in" is intended to include the money or other property being laundered (the courts), any commissions or fees paid to the launderer, and *any property used to facilitate the laundering offense.*

134 Cong. Rec. S17365 (daily ed. Nov. 10, 1988) (emphasis added).

68. In *United States v. All Monies*, 754 F. Supp. 1467 (D. Haw. 1991), the court held that forfeiture of an entire bank account used to launder narcotics proceeds was appropriate under 18 U.S.C. § 981(a)(1)(A).

> This Court finds that 18 U.S.C. § 981(a)(1)(A) applies to all property that facilitates violations of §§ 1956 and 1957. Even though § 981 does not expressly include the words "facilitate" or "facilitating," the statute covers property "involved in" illegal money laundering transactions. . . The legislative history makes it clear

> that "property involved in" includes property used tc facilitate money laundering offenses.

Id. at 1473.

69. In *United States v. Certain Funds on Deposit*, 769 F. Supp. 80 (E.D.N.Y. 1991), the court adopted the reasoning of the *All Monies* case. Interpreting 18 U.S.C. § 981(a)(1)(A), the court held that:

> This section has been construed by the district courts as authorizing the forfeiture of an entire bank account or business which was used to "facilitate" the laundering of money in violation of 18 U.S.C. § 981(a)(1)(A).

Id. at 84 (citing *All Monies*, supra; *United States v. 4643 W. Kennedy Blvd.*, No. 90-46-Civ-T-13, slip op., 1990 WL305391 [M.D.Fla. Feb. 12, 1990] (emphasis added).

70. Each of these were accounts controlled by Arlt. This supports the conclusion that these accounts were used to facilitate the numerous money laundering acts committed by Arlt and his associates. In effect, the accounts were used to "facilitate" the laundering of claimants' methamphetamine proceeds. Thus, the accounts and the money in such accounts is forfeitable.

71. Even if claimants could establish that they mixed some legitimately obtained money into the accounts containing narcotics proceeds, all of the money in such accounts is forfeitable. In finding that an entire bank account could be forfeited, even if the account contained legitimate deposits, the court in *Certain Funds on Deposit* reasoned:

> As the government contends, limiting the forfeiture of funds under these circumstances to

> the proceeds of the initial fraudulent activity would undermine the purpose of the forfeiture statute. Criminal activity such as money laundering largely depends upon the use of legitimate monies to advance or facilitate the scheme. It is precisely the commingling of tainted funds with legitimate money that facilitates the laundering and enables it to continue.

Id. at 84-85.

72. Accordingly, the money seized from these accounts should be forfeited if the bank accounts from which the funds were seized contained narcotics proceeds. Unless claimants can establish with competent evidence that such accounts did not contain funds traceable to narcotics proceeds, which they have not, the defendant funds must be forfeited to plaintiff.

73. The uncontroverted facts more than establish probable cause to believe that each of the defendant properties is forfeitable as properties "involved in" money laundering in violation of sections 1956 and 981.

74. Claimants have not offered competent evidence establishing that they had any income other than the proceeds from methamphetamine activities or that the defendant properties were not "involved in" violations of § 1956. Therefore, they have not set forth any fact which raises an issue of fact to be resolved at trial. Accordingly, entry of summary judgment is appropriate in this action.

75. Therefore, under 21 U.S.C. § 881(a)(6) and 18 U.S.C. § 981(a)(1)(A) the defendant properties are forfeitable to the plaintiff United States of America.

DATED: Mar. 29, 1993

/s/ A. Wallace Tashima
United States District Judge

PRESENTED BY:

TERREE A. BOWERS
United States Attorney
LEON W. WEIDMAN
Assistant United States Attorney
Chief, Civil Division
MANUEL A. MEDRANO
Assistant United States Attorney
Chief, Asset Forfeiture Section

/s/ Mark A. Feldman
MARK A. FELDMAN
Assistant United States Attorney

Attorneys for Plaintiff

CERTIFICATE OF SERVICE BY REGULAR MAIL

I, Noreen Neria, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is Office of United States Attorney, Federal Building, Suite 7516, 300 North Los Angeles Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action;

That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of the United States District Court for the Central District of California, at whose direction the service by regular mail described in this Certificate was made; that on December 4, 1992, which was deposited in the mail in the Federal Building, Suite 7516, 300 North Los Angeles, California in the above-entitled action, in a envelope bearing the requisite postage, a copy of: Statement of Uncontroverted Facts and Conclusions of Law

Addressed to: Alaleh Kamran; Esq.
4705 Laurel Canyon Boulevard,
Ste. 203
North Hollywood, California 91607

her/his last known address, at which place there is a delivery service by regular mail.

This Certificate is executed on December 4, 1992, at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.

/s/ Noreen Neria
NOREEN NERIA

APPENDIX F

[Filed Mar. 29, 1993]

TERREE A. BOWERS
United States Attorney
LEON W. WEIDMAN
Assistant United States Attorney
Chief, Civil Division
MANUEL A. MEDRANO
Assistant United States Attorney
Chief, Asset Forfeiture Section
MARK A. FELDMAN
Assistant United States Attorney
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-2569

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

No. CV 91-3264 AWT(EEx)

UNITED STATES OF AMERICA,
Plaintiff,

v.

$405,089.23 U.S. CURRENCY; $8,929.93 U.S. CURRENCY; $123,000 U.S. CURRENCY; ONE BELL 47 G-2 HELICOPTER, U.S. Registration Number N59H;

STORMY SEAS FOUR (SHRIMP BOAT) official number 2159; ONE PIPER CHEROKEE 6 AIRPLANE; ONE HUNDRED THIRTY-EIGHT (138) SILVER BARS; ONE 1985 JAGUAR, VIN: SAJNV5842FC119348; ONE 1981 WELLCRAFT, VIN: HALLWELT1593G788; ONE 1988 JAGUAR, VIN: SAJHU164JC530324; ONE 1986 PORSCHE, VIN: WPOAAO940GN454897; ONE 1988 JAGUAR, VIN: SAJAV1643JC521364; ONE 1986 CHEVROLET, VIN: 1G8CS18RXG0140-772; ONE 1988 MITSUBISHI, VIN: JA7FL24D9-JP0505914; ONE 1987 NISSAN, VIN: JN6ND11S-3HW033709; ONE 1987 SUZUKI, VIN: 1S4JC51C-2H4154485; ONE 1988 JEEP, VIN: 2BCHV8157-JB523469; ONE 1988 CHEVROLET, VIN: 1GCFC-24KOJZ253793; ONE 1983 CHEVROLET, VIN: 1GCS18B9D8132968,

Defendants.

Date: December 28, 1992

Time: 10:00 a.m.

Place: Courtroom of the
Honorable A. Wallace
Tashima

JUDGMENT

Plaintiff' motion for summary judgment was submitted without oral argument. The Court after considering the papers filed in connection with the motion hereby GRANTS plaintiff's motion.

Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff's motion

for summary judgment is granted and title to all of the defendant properties is vested in the United States of America.

IT IS FURTHER ORDERED that claimants shall have no further interest in the defendant properties.

DATED: MAR 29 1993

/s/ [Illegible]
United States District Judge

PRESENTED BY:

TERREE A. BOWERS
United States Attorney
LEON W. WEIDMAN
Assistant United States Attorney
Chief, Civil Division
MANUEL A. MEDRANO
Assistant United States Attorney
Chief, Asset Forfeiture Section

/s/ Mark A. Feldman
MARK A. FELDMAN
Assistant United States Attorney

Attorneys for Plaintiff

CERTIFICATE OF SERVICE BY REGULAR MAIL

I, Noreen Neria, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is Office of United States Attorney, Federal Building, Suite 7516, 300 North Los Angeles Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action;

That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of the United States District Court for the Central District of California, at whose direction the service by regular mail described in this Certificate was made; that on December 4, 1992, which was deposited in the mail in the Federal Building, Suite 7516, 300 North Los Angeles, California in the above-entitled action, in a envelope bearing the requisite postage, a copy of: Order

Addressed to: Alaleh Kamran, Esq.
4705 Laurel Canyon Boulevard,
Ste. 203
North Hollywood, California 91607

her/his last known address, at which place there is a delivery service by regular mail.

This Certificate is executed on December 4, 1992, at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.

/s/ Noreen Neria
NOREEN NERIA

APPENDIX G

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

June 1990 Grand Jury

CR 91-329(A)-DT

UNITED STATES OF AMERICA, PLAINTIFF,

v.

CHARLES WESLEY ARLT, ANITA GAGE, JAMES ELI WREN, DARYLE EUGENE HOUSE, DEANNA MARIE PIERCE, JAMES ROCKY HILL, and ROBERT KUHNLE, DEFENDANTS.

FIRST SUPERSEDING INDICTMENT

[21 U.S.C. §§ 846, 841(a)(1): Conspiracy to Aid and Abet the Manufacture of Methamphetamine; 18 U.S.C. §§ 371, 1956: Conspiracy to Launder Monetary Instruments; 18 U.S.C. § 1956(a): Laundering of Monetary Instruments; 18 U.S.C. § 2: Aiding and Abetting and Causing an Act to be Done]

The Grand Jury charges:

COUNT ONE

[21 U.S.C. §§ 846, 841(a)(1); 18 U.S.C. § 2]

I. *OBJECTS OF THE CONSPIRACY*

Beginning on a date unknown to the Grand Jury and continuing to on or about March 29, 1991, within

the Central District of California and elsewhere, defendants CHARLES WESLEY ARLT, ANITA GAGE, JAMES ELI WREN, DARYLE EUGENE HOUSE, DEANNA MARIE PIERCE, JAMES ROCKY HILL, ROBERT KUHNLE, and others both known and unknown to the Grand Jury, knowingly and intentionally conspired and agreed with each other to commit the following offenses against the United States:

1. To knowingly and intentionally aid and abet the manufacture of 1 kilogram or more of a substance or mixture containing a detectable amount of methamphetamine, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 846, and Title 18, United States Code, Section 2.

2. To knowingly and intentionally manufacture 1 kilogram or more of a substance or mixture containing a detectable amount of methamphetamine, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 846.

II. *MEANS BY WHICH THE OBJECTS OF THE CONSPIRACY WERE TO BE ACCOMPLISHED*

The objects of the conspiracy were to be accomplished in substance as follows:

1. The defendants supplied chemicals used in the manufacture of methamphetamine, including hydriodic acid and red phosphorous, to unindicted co-conspirators, who in turn manufactured methamphetamine. Defendants CHARLES WESLEY ARLT and JAMES ELI WREN wire transferred the funds necessary to purchase hydriodic acid from banks

within the Central District of California to bank accounts in Texas controlled by defendant DEANNA MARIE PIERCE. Defendants CHARLES WESLEY ARLT and ANITA GAGE also transported United States currency to the Texas banks. Defendants CHARLES WESLEY ARLT and DEANNA MARIE PIERCE deposited the currency into the Texas bank accounts controlled by defendant DEANNA MARIE PIERCE.

2. Defendant DEANNA MARIE PIERCE and an unindicted co-conspirator established a company called AAA Minerals Company (hereinafter "AAA Minerals"). Defendant DEANNA MARIE PIERCE thereafter ordered hydriodic acid from Calabrian International, Inc. (hereinafter "Calabrian"), a chemical manufacturing and distribution company, on behalf of AAA Minerals. Defendant DEANNA MARIE PIERCE wire transferred the funds for the hydriodic acid purchases from the Texas bank accounts that she controlled to Calabrian, and requested shipment either to a warehouse facility in Texas or to warehouse facilities within the Central District of California. All of the hydriotic acid solution ultimately was to be transported to San Bernardino County, California.

3. Defendants CHARLES WESLEY ARLT, JAMES ELI WREN, ROBERT KUHNLE, and an unindicted co-conspirator accepted delivery of the hydriodic acid in San Bernardino County California. Defendants CHARLES WESLEY ARLT, JAMES ELI WREN, ROBERT KUHNLE, and an unindicted co-conspirator then transported the hydriodic acid to Highland Towing Company (hereinafter "Highland Towing"), a towing business owned by defendant

CHARLES WESLEY ARLT, located in Highland, California. While at Highland Towing, unknown individuals scraped the labels and stencils that identified the contents of the drums as hydriodic acid from the drums in order to avoid detection by law enforcement.

4. Defendants ROBERT KUHNLE and JAMES ELI WREN transported hydriodic acid from Highland Towing to ANITA GAGE and others, who took possession of the hydriodic acid. The hydriodic acid was to be used to manufacture methamphetamine.

5. Defendant ANITA GAGE located individuals to purchase the hydriodic acid, and distributed the hydriodic acid to those individuals. Those individuals then manufactured and attempted to manufacture methamphetamine with the hydriodic acid. Defendant ANITA GAGE accepted United States currency and methamphetamine in exchange for the hydriodic acid, and in turn sold the methamphetamine for United States currency.

6. Defendants CHARLES WESLEY ARLT and DARYLE EUGENE HOUSE purchased and took delivery of red phosphorous, a chemical used to manufacture methamphetamine. Defendants CHARLES WESLEY ARLT and DARYLE EUGENE HOUSE further distributed the red phosphorous to individuals who manufactured or intended to manufacture methamphetamine with it.

7. Defendant JAMES ROCKY HILL arranged for the delivery of hydriodic acid and red phosphorous to other co-conspirators, provided security to the co-conspirators, and took custody of monies generated by and for the conspiracy.

III. *OVERT ACTS*

In furtherance of the conspiracy and to accomplish the objects of the conspiracy, defendants and others committed various overt acts within the Central District of California and elsewhere, including but not limited to the following:

1. On or about January 17, 1989, defendant CHARLES WESLEY ARLT purchased approximately 10 pounds of red phosphorous, a chemical used in the production of methamphetamine, from Chem Lab Supplies, Placentia, California.

2. On or about October 26, 1989, defendant CHARLES WESLEY ARLT purchased approximately 13 pounds of lidocaine, a chemical used to dilute or "cut" methamphetamine, from Chem Lab Supplies, Placentia, California.

3. On or about November 1, 1989, Defendant CHARLES WESLEY ARLT purchased approximately 10 gallons of hydriodic acid and other chemicals and apparatus used in the production of methamphetamine from Chem Lab Supplies, Placentia, California.

4. In or about December 1989, defendant CHARLES WESLEY ARLT and an unindicted co-conspirator purchased hydrochloric acid and four pumps at Chem Lab Supplies, Placentia, California.

5. On or about January 25, 1990, defendant CHARLES WESLEY ARLT purchased approximately 10 pounds of red phosphorous, a chemical used in the production of methamphetamine, from Chem Lab Supplies, Placentia, California.

6. On or about February 2, 1990, an unindicted co-conspirator ordered approximately 2,800 pounds of hydriodic acid solution costing approximately

$23,800, from Calabrian, to be available for customer pick up in Texas on or about February 12, 1990. This order was later changed to 4,000 pounds of hydriodic acid solution, costing approximately $33,000.

7. In or about February 1990, defendant ANITA GAGE carried approximately $30,000 in United States currency from the Central District of California to Texas, to be used for the purchase of hydriodic acid solution.

8. On or about February 9, 1990, defendant DEANNA MARIE PIERCE purchased a cashier's check with United States currency at Texas Commerce Bank in the amount of $33,000, made payable to Calabrian.

9. In or about February 1990, defendants CHARLES WESLEY ARLT and ANITA GAGE travelled from the Central District of California to Texas, for the purpose of taking delivery of hydriodic acid solution.

10. On or about February 12, 1990, defendant CHARLES WESLEY ARLT picked up approximately 4,000 pounds of hydriodic acid solution from Calabrian's facility in Port Neches, Texas.

11. On or about February 15, 1990, defendant DEANNA MARIE PIERCE ordered approximately 4,000 pounds of hydriodic acid solution costing approximately $33,000 plus shipping, from Calabrian, to be delivered on or about February 22, 1990 to a warehouse facility located at 209 South Friendswood Drive, Friendswood, Texas.

12. On or about February 20, 1990, defendant DEANNA MARIE PIERCE purchased a cashier's check with United States currency at Texas Commerce Bank in the amount of $33,157.62, made payable to Calabrian.

13. On or about February 22, 1990, at a warehouse facility at 209 South Friendswood Drive, Friendswood, Texas, defendant CHARLES WESLEY ARLT took delivery of approximately 4,000 pounds (eight 55-gallon drums) of hydriodic acid solution which had been shipped from Calabrian.

14. On or about February 23, 1990, defendant DEANNA MARIE PIERCE ordered approximately 4,000 pounds of hydriodic acid solution costing approximately $33,000 plus shipping, from Calabrian, to be delivered on or about March 12, 1990 to a warehouse facility located at 209 South Friendswood Drive, Friendswood, Texas.

15. On or about March 14, 1990, defendant DEANNA MARIE PIERCE wire transferred approximately $33,000 from Community National Bank in Friendswood, Texas, to Calabrian's bank account at National Westminster Bank, New Jersey.

16. In or about April, 1990, defendants CHARLES WESLEY ARLT and JAMES ELI WREN purchased and took delivery of approximately 500 pounds of red phosphorous from Great Lakes Chemical Company, Melrose Park, Illinois.

17. On or about April 16, 1990, defendant DEANNA MARIE PIERCE ordered approximately 8,000 pounds of hydriodic acid solution costing approximately $66,000, from Calabrian, to be picked up during the week of April 23, 1990. This order was later changed to authorize delivery via common carrier on or about May 8, 1990 to a warehouse facility located at 209 South Friendswood Drive, Friendswood, Texas.

18. On or about May 2, 1990, defendant CHARLES WESLEY ARLT deposited approximately $65,770 in United States currency into a bank account at Community National Bank, Friendswood, Texas.

19. On or about May 2, 1990, defendant CHARLES WESLEY ARLT wire transferred approximately $65,760 from Community National Bank, Friendswood, Texas, to Calabrian's bank account at National Westminster Bank, New Jersey.

20. On or about May 9, 1990, defendant DEANNA MARIE PIERCE caused the delivery of approximately 8,000 pounds of hydriodic acid solution to a warehouse facility located at 209 South Friendswood Drive, Friendswood, Texas.

21. On or about June 26, 1990, defendant CHARLES WESLEY ARLT purchased a cashier's check with United States currency at the Bank of San Bernardino, San Bernardino, California, in the amount of $35,000, made payable to AAA Minerals, with the purchaser listed as "OMNI MINING—C.W. ARLT."

22. On or about June 28, 1990, defendant DEANNA MARIE PIERCE ordered approximately 4,000 pounds of hydriodic acid solution costing approximately $33,000, from Calabrian, to be delivered on or about July 5, 1990 to a warehouse facility located at 424-A East Rialto Avenue, San Bernardino, California.

23. On or about June 28, 1990, defendant DEANNA MARIE PIERCE caused a cashier's check in the amount of $35,000, with the purchaser listed as "OMNI MINING—C.W. ARLT," to be delivered to Calabrian, in payment for 4,000 pounds of hydriodic acid.

24. On or about July 7, 1990, at the Consolidated Freightways terminal in San Bernardino County, California, defendant CHARLES WESLEY ARLT took delivery of approximately 4,000 pounds (eight 55-gallon drums) of hydriodic acid solution which had been shipped from Calabrian to AAA Minerals.

25. On or about July 16, 1990, defendant DEANNA MARIE PIERCE ordered approximately 4,800 pounds of hydriodic solution costing approximately $34,080, from Calabrian, to be delivered on or about July 21, 1990 to a warehouse facility located at 424-A East Rialto Avenue, San Bernardino, California.

26. On or about July 16, 1990, defendant CHARLES WESLEY ARLT wire transferred approximately $45,000 from Bank of San Bernardino, San Bernardino, California to a bank account at Texas Commerce Bank controlled by defendant DEANNA MARIE PIERCE.

27. On or about July 16, 1990, defendant DEANNA MARIE PIERCE wire transferred approximately $34,637 from a bank account at Texas Commerce Bank to Calabrian's bank account at National Westminster Bank, New Jersey.

28. On or about July 25, 1990, at this Consolidated Freightways terminal in San Bernardino County, California, defendant JAMES ELI WREN took delivery of approximately 4,800 pounds (eight 55-gallon drums) of hydriodic acid solution which had been shipped from Calabrian to AAA Minerals.

29. On or about August 1, 1990, defendant DEANNA MARIE PIERCE ordered approximately 4,800 pounds of hydriodic acid solution costing approximately $34,080 plus shipping from Calabrian, to be ready for delivery on or about August 8, 1990

to a warehouse facility located at 424-A East Rialto Avenue, San Bernardino, California.

30. On or about August 1, 1990, defendant CHARLES WESLEY ARLT deposited approximately $39,007 in United States currency into a bank account at the Bank of San Bernardino.

31. On or about August 1, 1990, defendant CHARLES WESLEY ARLT wire transferred approximately $35,000 from the Bank of San Bernardino to a bank account at the First Bank of Deerpark, Texas, controlled by defendant DEANNA MARIE PIERCE.

32. On or about August 2, 1990, defendant DEANNA MARIE PIERCE wire transferred approximately $34,637 from the First Bank of Deerpark to Calabrian's bank account at National Westminster Bank, New Jersey.

33. On or about August 8, 1990, defendant CHARLES WESLEY ARLT purchased Highland Towing Company, 27110 East Third Street, San Bernardino, California.

34. On or about August 10, 1990, defendant JAMES ELI WREN rented unit A-19 at a warehouse facility located at 1180 East Ninth Street, San Bernardino, California.

35. On or about August 21, 1990, defendant CHARLES WESLEY ARLT ordered 700 pounds of red phosphorous costing $2,975, from Great Lakes Chemical Company, Melrose Park, Illinois.

36. On or about August 21, 1990, defendant JAMES ELI WREN deposited $10,605 in United States currency into a bank account at the Bank of San Bernardino.

37. On or about August 21, 1990, defendant JAMES ELI WREN wire transferred approximately

$2,975 from a bank account at the Bank of San Bernardino to Great Lakes Chemical Company's bank account in Melrose Park, Illinois.

38. On or about August 27, 1990, defendant DEANNA MARIE PIERCE ordered approximately 9,600 pounds of hydriodic acid solution costing approximately $67,200 plus shipping from Calabrian, to be delivered on or about September 5, 1990 to a warehouse facility located at 424-A East Rialto Avenue, San Bernardino, California.

39. On or about August 27, 1990, defendant JAMES ELI WREN deposited approximately $71,000 in United States currency into a bank account at the Bank of San Bernardino.

40. On or about August 27, 1990, defendant JAMES ELI WREN wire transferred approximately $71,000 from a bank account at the Bank of San Bernardino to a bank account at the First Bank of Deerpark controlled by defendant DEANNA MARIE PIERCE.

41. On or about August 27, 1990, defendant DEANNA MARIE PIERCE wire transferred approximately $68,315 from the First Bank of Deerpark to Calabrian's bank account at National Westminster Bank, New Jersey.

42. On or about August 30, 1990, defendant CHARLES WESLEY ARLT took delivery of approximately 700 pounds of red phosphorous at a warehouse facility located at 422-A East Rialto Avenue, San Bernardino, California.

43. On or about September 8, 1990, at the Consolidated Freightways terminal in San Bernardino County, California, defendant JAMES ELI WREN took delivery of approximately 9,600 pounds (sixteen

55-gallon drugs) of hydriodic acid solution which had been shipped from Calabrian to AAA Minerals.

44. On or about September 14, 1990, defendant CHARLES WESLEY ARLT purchased, with $130,000 in United States currency, a 160-acre parcel of property in Oceola, Nevada, commonly known as the Old Marriott Ranch.

45. On or about October 8, 1990, defendant DEANNA MARIE PIERCE ordered approximately 5,216 pounds of hydriodic acid solution costing approximately $37,503.04, from Calabrian, to be delivered on or about October 15, 1990 to a warehouse facility located at 424-A East Rialto Avenue, San Bernardino, California.

46. On or about October 10, 1990, defendant JAMES ELI WREN deposited $42,600 in United States currency into a bank account at the Bank of San Bernardino.

47. On or about October 10, 1990, defendant JAMES ELI WREN wire transferred approximately $38,000 from the Bank of San Bernardino to a bank account at the First Bank of Deerpark controlled by defendant DEANNA MARIE PIERCE.

48. On or about October 10, 1990, defendant DEANNA MARIE PIERCE wire transferred approximately $36,021 from the First Bank of Deerpark to Calabrian's bank account at National Westminster Bank, New Jersey.

49. On or about October 15, 1990, at the Consolidated Freightways terminal in San Bernardino County, California, defendant JAMES ELI WREN took delivery of approximately 5,216 pounds (eight 55-gallon drums) of hydriodic acid solution which had been shipped from Calabrian to AAA Minerals.

50. On or about November 5, 1990, defendant DEANNA MARIE PIERCE ordered approximately 5,216 pounds of hydriodic acid solution costing approximately $37,503.04, from Calabrian, to be delivered on or about November 12, 1990 to a warehouse facility located at 424-A East Rialto Avenue, San Bernardino, California.

51. On or about November 5, 1990, defendant JAMES ELI WREN deposited approximately $40,000 in United States currency into a bank account at the Bank of San Bernardino.

52. On or about November 5, 1990, defendant JAMES ELI WREN wire transferred approximately $40,000 to a bank account at the First Bank of Deerpark controlled by defendant DEANNA MARIE PIERCE.

53. On or about November 5, 1990, defendant DEANNA MARIE PIERCE wire transferred approximately $36,981 from the First Bank of Deerpark to Calabrian's bank account at National Westminster Bank, New Jersey.

54. On or about November 11, 1990, at the Consolidated Freightways terminal in San Bernardino County, California, defendant CHARLES WESLEY ARLT took delivery of approximately 5,216 pounds (eight 55-gallon drums) of hydriodic acid solution which had been shipped from Calabrian to AAA Minerals.

55. On or about November 8, 1990, defendant JAMES ELI WREN purchased a cashier's check with United States currency in the amount of $200,000, made payable to defendant CHARLES WESLEY ARLT.

56. On or about November 9, 1990, defendant CHARLES WESLEY ARLT endorsed a $200,000

cashier's check and delivered it to Unibank, New York, depositing the funds into a bank account there.

57. On or about November 9, 1990, defendant CHARLES WESLEY ARLT instructed Unibank, New York, to forward $200,000 to a bank account at Unibank, Luxembourg controlled by defendant CHARLES WESLEY ARLT and two unindicted co-conspirators.

58. On or about November 27, 1990, an unindicted co-conspirator deposited $47,069 in United States currency into a bank account at the Bank of San Bernardino.

59. On or about November 27, 1990, an unindicted co-conspirator wire transferred approximately $40,000 from the Bank of San Bernardino to a bank account at the First Bank of Deerpark controlled by defendant DEANNA MARIE PIERCE.

60. On or about November 28, 1990, defendant DEANNA MARIE PIERCE ordered approximately 5,216 pounds of hydriodic acid solution costing approximately $36,981, from Calabrian, to be delivered "as soon as possible" to a warehouse facility located at 424-A East Rialto Avenue, San Bernardino, California.

61. On or about November 28, 1990, defendant DEANNA MARIE PIERCE wire transferred approximately $36,981 from the First Bank of Deerpark to Calabrian's bank account at National Westminster Bank, New Jersey.

62. On or about November 29, 1990, defendant DEANNA MARIE PIERCE ordered approximately 5,216 pounds of hydriodic acid solution costing approximately $37,503, from Calabrian, to be delivered on or about December 3, 1990, to a warehouse facility

located at 424-A East Rialto Avenue, San Bernardino, California.

63. On or about December 2, 1990, defendant JAMES ELI WREN rented unit A-10 at a warehouse facility located at 1180 East Ninth Street, San Bernardino, California.

64. On or about December 3, 1990, at the Consolidated Freightways terminal in San Bernardino County, California, defendant ROBERT KUHNLE took delivery of approximately 5,216 pounds (eight 55-gallon drums) of hydriodic acid solution which had been shipped from Calabrian to AAA Minerals.

65. On or about December 3, 1990, defendant CHARLES WESLEY ARLT purchased the following ammunition at a sporting goods store in Ely, Nevada: two boxes of .38 caliber ammunition, four boxes of .44 magnum ammunition, two boxes of .30 caliber carbine ammunition, four boxes of shotgun shells, and two boxes of .380 ammunition.

66. On or about December 14, 1990, defendant DEANNA MARIE PIERCE changed her order of November 29, 1990 with Calabrian from 5,216 pounds to approximately 10,432 pounds of hydriodic acid solution costing approximately $73,962, to be shipped to a warehouse facility located at 424-A East Rialto Avenue, San Bernardino, California.

67. On or about December 14, 1990, defendant JAMES ELI WREN wire transferred approximately $80,000 from the Bank of San Bernardino to a bank account at the First Bank of Deerpark controlled by defendant DEANNA MARIE PIERCE.

68. On or about December 14, 1990, defendant DEANNA MARIE PIERCE wire transferred approximately $73,962 from the First Bank of Deer-

park to Calabrian's bank account at National Westminster Bank, New Jersey.

69. On or about December 20, 1990, at the Consolidated Freightways terminal in San Bernardino County, California, defendant ROBERT KUHNLE took delivery of approximately 10,432 pounds (sixteen 55-gallon drums) of hydriodic acid solution which had been shipped from Calabrian to AAA Minerals.

70. On or about January 25, 1991, defendant DEANNA MARIE PIERCE ordered approximately 10,432 pounds of hydriodic acid solution costing approximately $73,962, from Calabrian, to be delivered on or about January 30, 1991, to the Consolidated Freightways terminal, San Bernardino County, California.

71. On or about January 25, 1991, defendant JAMES ELI WREN deposited $80,000 in United States currency into a bank account at the Bank of San Bernardino.

72. On or about January 25, 1991, defendant JAMES ELI WREN wire transferred approximately $80,000 from the Bank of San Bernardino to a bank account at the First Bank of Deerpark controlled by defendant DEANNA MARIE PIERCE.

73. On or about January 25, 1991, defendant DEANNA MARIE PIERCE wire transferred approximately $73,962 from the First Bank of Deerpark to Calabrian's bank account at National Westminster Bank, New Jersey.

74. On or about February 5, 1991, at the Consolidated Freightways terminal in San Bernardino County, California, defendant ROBERT KUHNLE took delivery of approximately 5,216 pounds (eight

55-gallon drums) of hydriodic acid solution which had been shipped from Calabrian to AAA Minerals.

75. On or about February 8, 1991, at the Consolidated Freightways terminal in San Bernardino County, California, defendant ROBERT KUHNLE took delivery of approximately 5,216 pounds (eight 55-gallon drums) of hydriodic acid solution which had been shipped by Calabrian to AAA Minerals.

76. On or about February 12, 1991, defendant JAMES ELI WREN distributed two 55-gallon drums of hydrodic acid solution in the parking lot of the Comfort Inn, San Bernardino, California.

77. On or about February 12, 1991, defendant DEANNA MARIE PIERCE ordered approximately 10,432 pounds (sixteen 55-gallon drums) of hydriodic acid solution costing approximately $74,453, from Calabrian, to be delivered "as soon as possible" to the Consolidated Freightways terminal, San Bernardino County, California.

78. On or about February 12, 1991, defendants CHARLES WESLEY ARLT and JAMES ELI WREN deposited approximately $80,000 in United States currency into a bank account at the Security Pacific National Bank, San Bernardino, California.

79. On or about February 12, 1991, defendants CHARLES WESLEY ARLT and JAMES ELI WREN wire transferred approximately $80,000 from the Security Pacific National Bank to a bank account at the First Bank of Deerpark controlled by defendant DEANNA MARIE PIERCE.

80. On or about February 13, 1991, following several seizures by law enforcement officers of methamphetamine, chemicals and equipment used in the manufacture of methamphetamine, and large quantities of United States currency, defendant DEANNA

MARIE PIERCE telephoned Calabrian and requested that her order of 10,432 pounds of hydriodic acid solution be placed "on hold," stating that there had been "an accident in the mines."

81. On or about February 19, 1991, defendant JAMES ROCKY HILL arranged for the delivery of approximately 3,000 pounds of red phosphorous to defendant DARYLE EUGENE HOUSE at 56024 Tracy Boulevard, Yucca Valley, California.

82. On or about February 20, 1991, defendant DARYLE EUGENE HOUSE took delivery of approximately 3,000 pounds of red phosphorous at his residence located at 56024 Tracy Boulevard, Yucca Valley, California.

83. On or about February 20, 1991, defendant JAMES ROCKY HILL arranged for the transport of the approximately 3,000 pounds of red phosphorous to a remote mine site near Daggett, California.

84. On or about February 21, 1991, defendant JAMES ELI WREN transported in excess of $123,000 in United States currency from Security Pacific National Bank, San Bernardino, California, to Mayhill Bail Bonds, San Bernardino, California.

85. On or about February 22, 1991, defendant CHARLES WESLEY ARLT purchased a cashier's check with United States currency at the Bank of America in the amount of $200,000, made payable to Unibank.

86. On or about March 21, 1991, defendant JAMES ROCKY HILL possessed approximately $400,000 in his savings account at the Security Pacific National Bank, Rubidoux Branch, 5694 Mission Boulevard, Riverside, California.

87. On or about March 21, 1991, defendant JAMES ROCKY HILL made arrangements with

Security Pacific National Bank to withdraw $400,000 from his savings account in United States currency on March 29, 1991.

88. On or about March 29, 1991, defendant DARYLE EUGENE HOUSE possessed formulas detailing methods of manufacturing methamphetamine at his residence located on Tracy Boulevard in Yucca Valley, California.

89. On or about March 29, 1991, defendants CHARLES WESLEY ARLT, DARYLE EUGENE HOUSE, and ROBERT KUHNLE possessed a formula detailing a method of manufacturing methamphetamine at defendant CHARLES WESLEY ARLT'S ranch house, located at the Old Marriott Ranch, Oceola, Nevada.

90. On or about March 29, 1991, defendants CHARLES WESLEY ARLT, DARYLE EUGENE HOUSE, and ROBERT KUHNLE possessed approximately 41 firearms at defendant CHARLES WESLEY ARLT'S ranch house, located at the Old Marriott Ranch, Oceola, Nevada.

91. On or about March 29, 1991, defendants CHARLES WESLEY ARLT, DARYLE EUGENE HOUSE, and ROBERT KUHNLE possessed hydriodic acid at defendant CHARLES WESLEY ARLT'S ranch house, located at the Old Marriott Ranch, Oceola, Nevada.

92. On or about March 29, 1991, defendant CHARLES WESLEY ARLT possessed approximately 29 110-pound containers of red phosphorous on a mine site located in a remote area near Daggett, California.

COUNT TWO

[18 U.S.C. §§ 371, 1956(a)(1)]

I. *OBJECT OF THE CONSPIRACY*

Beginning on a date unknown to the Grand Jury and continuing to on or about March 29, 1991, within the Central District of California and elsewhere, defendants CHARLES WESLEY ARLT, JAMES ELI WREN, DEANNA MARIE PIERCE, JAMES ROCKY HILL, and others both known and unknown to the Grand Jury, knowingly and willfully conspired and agreed with each other to commit the following offense against the United States:

1. To knowingly and intentionally launder monetary instruments, in violation of Title 18, United States Code, Sections 371 and 1956.

II. *MEANS BY WHICH THE OBJECT OF THE CONSPIRACY WAS TO BE ACCOMPLISHED*

The object of the conspiracy was to be accomplished in substance as follows:

1. The means alleged in Count One of this indictment, as set forth at paragraphs 1 to 7 of the means relating to Count One, are incorporated herein by reference and alleged as the means of this count.

III. *OVERT ACTS*

In furtherance of the conspiracy and to accomplish the object of the conspiracy, defendants CHARLES WESLEY ARLT, JAMES ELI WREN, DEANNA MARIE PIERCE, JAMES ROCKY HILL, and others both known and unknown to the Grand Jury, committed various overt acts within the Central District of California and elsewhere, including but not limited to the following:

1. The overt acts alleged in Count One of this indictment, as set forth at paragraphs 1 through 92 of the overt acts relating to Count One, are incorporated herein by reference and are alleged as overt acts 1 to 92 of this count.

COUNTS THREE AND FOUR

[18 U.S.C. §§ 2, 1956(a)(1)]

On or about the dates listed below, in San Bernardino County, within the Central District of California, defendant CHARLES WESLEY ARLT aided, abetted, counselled, commanded, induced, procured, and caused financial transactions involving the proceeds of felonious buying, selling, and dealing in controlled substances and listed chemicals, with the intent to promote the carrying on of said unlawful activity, and knowing that the transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of such proceeds, in that defendant CHARLES WESLEY ARLT provided defendant DEANNA MARIE PIERCE with United States currency, who in turn wire transferred the amounts listed below from bank accounts in Texas to Calabrian's bank account at National Westminster Bank in New Jersey. At said times and places, defendant CHARLES WESLEY ARLT knew that said amounts of United States curdency represented the proceeds of some form of unlawful activity.

Count	Date	Wire Transfer to Calabrian From	Amount
3	July 16, 1990	Texas Commerce Bank	$34,637
4	August 2, 1990	First Bank of Deerpark	$34,637

COUNTS FIVE THROUGH NINE

[18 U.S.C. §§ 2, 1956(a)(1)]

On or about the dates listed below, in San Bernardino County, within the Central District of California, defendants CHARLES WESLEY ARLT and JAMES ELI WREN aided, abetted, counselled, commanded, induced, procured, and caused financial transactions involving the proceeds of felonious buying, selling, and dealing in controlled substances and listed chemicals, with the intent to promote the carrying on of said unlawful activity, and knowing that the transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of such proceeds, in that defendants CHARLES WESLEY ARLT and JAMES ELI WREN provided defendant DEANNA MARIE PIERCE with United States currency, who in turn wire transferred the amounts listed below from a bank account at the First Bank of Deerpark in Texas to Calabrian's bank account at National Westminster Bank in New Jersey. At said times and places, defendants CHARLES WESLEY ARLT and JAMES ELI WREN knew that said amounts of United States currency represented the proceeds of some form of unlawful activity.

Count	Date	Amount
5	August 27, 1990	$68,315
6	October 10, 1990	$36,021
7	November 5, 1990	$36,981
8	December 14, 1990	$73,962
9	January 25, 1991	$73,962

COUNTS TEN AND ELEVEN

[18 U.S.C. §§ 2, 1956(a)(1)]

On or about the dates listed below, in San Bernardino County, within the Central District of California, defendant CHARLES WESLEY ARLT conducted financial transactions involving the proceeds of felonious buying, selling, and dealing in controlled substances and listed chemicals, with the intent to promote the carrying on of said unlawful activity, and knowing that the transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of such proceeds, in that defendant CHARLES WESLEY ARLT wire transferred the amounts of United States currency listed below from bank accounts at the Bank of San Bernardino, within the Central District of California, to bank accounts in Texas controlled by defendant DEANNA MARIE PIERCE. At said times and places, defendant CHARLES WESLEY ARLT knew that said amounts of United States currency represented the proceeds of some form of unlawful activity.

Count	Date	Amount
10	July 16, 1990	$45,000
11	August 1, 1990	$35,000

COUNTS TWELVE THROUGH SEVENTEEN

[18 U.S.C. § 1956(a)(1)]

On or about the dates listed below, in San Bernardino County, within the Central District of California, defendant JAMES ELI WREN conducted financial transactions involving the proceeds of felonious buying, selling, and dealing in controlled substances

and listed chemicals, with the intent to promote the carrying on of said unlawful activity, and knowing that the transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of such proceeds, in that defendant JAMES ELI WREN wire transferred the amounts of United States currency listed below from bank accounts at banks within the Central District of California to bank accounts in Texas controlled by defendant DEANNA MARIE PIERCE. At said times and places, defendant JAMES ELI WREN knew that said amounts of United States currency represented the proceeds of some form of unlawful activity.

At said times and places, defendant CHARLES WESLEY ARLT aid, abetted, counselled, commanded, induced, procured and caused those offenses.

Count	Date	Bank From Which Funds Were Transferred	Amount
12	August 27, 1990	Bank of San Bernardino	$71,000
13	October 10, 1990	Bank of San Bernardino	$38,000
14	November 5, 1990	Bank of San Bernardino	$40,000
15	December 14, 1990	Bank of San Bernardino	$80,000
16	January 25, 1991	Bank of San Bernardino	$80,000
17	February 12, 1991	Security Pacific National Bank	$80,000

COUNT EIGHTEEN

[18 U.S.C. § 1956(a)(1)]

On or about June 26, 1990, in San Bernardino County, within the Central District of California, defendant CHARLES WESLEY ARLT conducted a financial transaction involving the proceeds of felonious buying, selling, and dealing in controlled substances and listed chemicals, with the intent to promote the carrying on of said unlawful activity, and knowing that the transaction was designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of such proceeds, in that defendant CHARLES WESLEY ARLT purchased a cashier's check in the amount of approximately $35,000 at the Bank of San Bernardino, within the Central District of California, to be used for the purchase of chemicals from Calabrian. At said time and place, defendant CHARLES WESLEY ARLT knew that said amount of United States currency represented the proceeds of some form of unlawful activity.

COUNT NINETEEN

[18 U.S.C. § 1956(a)(1)]

On or about August 21, 1990, in San Bernardino County, within the Central District of California, defendant JAMES ELI WREN conducted a financial transaction involving the proceeds of felonious buying, selling, and dealing in controlled substances and listed chemicals, with the intent to promote the carrying on of said unlawful activity, in that defendant JAMES ELI WREN wire transferred approximately $2,975 in United States currency from a bank account at the Bank of San Bernardino, within the Central District of California, to Great Lakes Chemical Company's bank account in Melrose Park, Illinois. At said time and place, defendant JAMES ELI WREN knew that said amount of United States currency represented the proceeds of some form of unlawful activity.

COUNT TWENTY

[18 U.S.C. § 1956(a)(1)]

On or about November 8, 1990, in San Bernardino County, within the Central District of California, defendant JAMES ELI WREN conducted a financial transaction involving the proceeds of felonious buying, selling, and dealing in controlled substances and listed chemicals, knowing that the transaction was designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of such proceeds, in that defendant JAMES ELI WREN purchased a cashier's check in the amount of $200,000 at the Bank of San Bernardino. At said time and place, defendant JAMES ELI WREN knew that said amount of United States currency represented the proceeds of some form of unlawful activity.

COUNT TWENTY ONE

[18 U.S.C. § 1956(a)(1)]

On or about February 22, 1991, in San Bernardino County, within the Central District of California, defendant CHARLES WESLEY ARLT conducted a financial transaction involving the proceeds of felonious buying, selling, and dealing in controlled substances and listed chemicals, knowing that the transaction was designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of such proceeds, in that defendant CHARLES WESLEY ARLT purchased a cashier's check in the amount of $200,000 at the Bank of America. At said time and place, defendant CHARLES WESLEY ARLT knew that said amount of United

States currency represented the proceeds of some form of unlawful activity.

COUNT TWENTY TWO

[18 U.S.C. § 1956(a)(1)]

On or about March 21, 1991, in Riverside County, within the Central District of California, defendant JAMES ROCKY HILL attempted to conduct a financial transaction involving the proceeds of felonious buying, selling, and dealing in controlled substances and listed chemicals, knowing that the transaction was designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of such proceeds, in that defendant JAMES ROCKY HILL attempted to withdraw approximately $400,000 from his bank account at Security Pacific National Bank, Riverside, California. At said time and place, defendant JAMES ROCKY HILL knew that said amount of United States currency represented the proceeds of some form of unlawful activity.

A TRUE BILL

_____

Foreperson

LOURDES G. BAIRD
United States Attorney

ROBERT L. BROSIO
Assistant United States Attorney
Chief, Criminal Division

APPENDIX H

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Docket No. CR-91-329 (A) DT

Social Security No. 462-71-4157 and 462-74-4137

UNITED STATES OF AMERICA

vs.

CHARLES WESLEY ARLT

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date

ENTERED July 13, 1992

☐ WITHOUT COUNSEL However, the Court advised defendant of right to counsel and asked whether defendant desired have counsel appointed by the Court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Lydia Sanchez, retained
(Name of Counsel)

☐ GUILTY, and the Court being satisfied that there is a factual basis for the plea. ☐ NOLO CONTENDERE ☒ NOT GUILTY

There being a verdict of ☒ GUILTY, defendant has been convicted as charged of the offense(s) of

conspiracy to aid and abet the manufacture of methamphetamine, conspiracy to launder monetary instruments, laundering of monetary instruments, and aid and abetting and causing an act to be done, in violation of Title 21, United States Code, Sections 846, 841(a)(1), Title 18, United States Code, Sections 371, 1956; 1956 (a)(1), and 2, as charged in Counts 1 through 18 and 21, of the 1st Superseding Indictment.

The Court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby committed the custody of the Bureau of Prisons to be imprisoned for a term of: life imprisonment as to Counts 1 through 18 and 21 of the 1st Superseding Indictment. This term consists of life imprisonment on Count One and 60 months on each of Counts 2-18 & 21, all to be served concurrently. Defendant is to pay a fine to the United States in the amount of $250,000.00. If the defendant is released from confinement, he is placed on supervised release for a period of 10 years. This term of supervised release consists of 10 years on Count 1 and 3 years on each of Counts 2-18 and 21, all such terms to run concurrently. The defendant is placed on supervised release upon the following terms and conditions that he shall: (1) comply with the rules and regulations of the Probation Office and General Order 318; and (2) pay any fine herein imposed by this judgment and that remains unpaid at the commencement of the

term of community supervision as directed by the Probation Office.

THE COURT ORDERS the underlying Indictment dismissed.

THE COURT NOTIFIES the defendant of his rights on appeal and denies defendant's request for stay of execution of sentence.

In addition to the special conditions of supervision, imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised release set out on the reverse side of this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

☐ This is a direct commitment to the Bureau of Prisons, and the Court has NO OBJECTION should the Bureau of Prisons designate defendant to a Community Corrections Center.

Signed By: ☒ U.S. District Judge Dickran Tevrizian
It is ordered that the Clerk deliver a certified copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Dated/Filed/7/15/92

LEONARD A. BROSNAN
Clerk

APPENDIX I

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Docket No. CR-91-329 (A) DT
Social Security No. 428-62-7760

UNITED STATES OF AMERICA

vs.

JAMES ELI WREN

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date.

July 13, 1992

☐ WITHOUT COUNSEL However, the Court advised defendant of right to counsel and asked whether defendant desired have counsel appointed by the Court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Dennis Palmieri, retained
(Name of Counsel)

☐ GUILTY, and the Court being satisfied that there is a factual basis for the plea. ☐ NOLO CONTENDERE ☒ NOT GUILTY.

There being a verdict of ☒ GUILTY, defendant has been convicted as charged of the offense(s) of: conspiracy to aid and abet the manufacture of methamphetamine, conspiracy to launder monetary instruments, laundering of monetary instruments, and aiding and abetting and causing an act to be done, in violation of Title 21, United States Code, Sections 846, 841(a)(1), Title 18, United States Code, Sections 371, 1956, 1956(a)(1), and 2, as charged in Counts 1,2,5,6,7,8,9,12,1314,15,16,17,19 and 20 of the 1st Superseding Indictment.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of: life imprisonment as to Counts One, 2, 5-9, 12-17, 19 and 20 of the 1st Superseding Indictment. This term consists of life imprisonment on Count One and 60 months on each of Counts 2, 5-9, 12-17, 19 and 20, all to be served concurrently. If the defendant is released from confinement, he is placed on supervised release for a period of five years. This term of supervised release consists of 5 years on Count 1 and 3 years on each of Counts 2, 5-9, 12-17, 19 and 20, all such terms to run concurrently. The defendant is placed on supervision upon the following terms and conditions that he shall: (1) comply with the rules and regulations of the Probation Office and General Order 318; and (2) pay a special assessment to the United States in the amount of $750.00.

THE COURT ORDERS the underlying Indictment dismissed.

THE COURT NOTIFIES the defendant of his rights on appeal and denies defendant's request for stay of execution of sentence.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervisory release set out on the reverse side of this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

☐ This is a direct commitement to the Bureau of Prisons, and the Court has NO OBJECTION should the Bureau of Prisons designate defendants to a Community Corrections Center.

Signed By: ☒ U.S. District Judge Dickran Tevrizian
It is ordered that the Clerk deliver a certified copy of this judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Dated/Filed/7/15/92

LEONARD A. BROSNAN
Clerk

APPENDIX J

The Fifth Amendment to the Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Section 371 of Title 18, United States Code, provides:

> **Conspiracy to Commit offense or to defraud United States**
>
> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.
>
> If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

Section 981 of Title 18, United States Code, provides:

> **Civil forfeiture**
>
> (a)(1) Except as provided in paragraph (2), the following property is subject to forfeiture to the United States:
>
> (A) Any property, real or personal, involved in a transaction or attempted transaction in violation of section 5313(a) or 5324(a) of title 31, or of section 1956 or 1957 of this title, or any property traceable to such property. However, no property shall be seized or forfeited in the case of a violation of section 513(a) of title 31 by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, or employee thereof.
>
> (B) Any property, real or personal, within the jurisdiction of the United States, constituting, derived from or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act), within whose jurisdiction such offense would be punishable by death or imprisonment for a term exceeding one year and which would be punishable under the laws of the United States by imprisonment for a term exceed-

ing one year if such act or activity constituting the offense against the foreign nation had occurred within the jurisdiction of the United States.

(C) Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of section 215, 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 656, 657, 842, 844, 1005, 1006, 1007, 1014, 1028, 1029, 1030, 1032, or 1344 of this title or a violation of section 1341 or 1343 of such title affecting a financial institution.

(D) Any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly from a violation of—

(i) Section 666(a)(1) (relating to Federal program fraud);

(ii) section 1001 (relating to fraud and false statements);

(iii) section 1031 (relating to major fraud against the United States);

(iv) section 1032 (relating to concealment of assets from conservator or receiver of insured financial institution);

(v) section 1341 (relating to mail fraud); or

(vi) section 1343 (relating to wire fraud),

if such violation relates to the sale of assets acquired or held by the Resolution Trust

Corporation, the Federal Deposit Insurance Corporation, as conservator or receiver for a financial institution, or any other conservator for a financial institution appointed by the Office of the Comptroller of the Currency or the Office of Thrift Supervision or the National Credit Union Administration, as conservator or liquidating agent for a financial institution.

(E) With respect to an offense listed in subsection (a)(1)(D) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations or promises, the gross receipts of such an offense shall include all property, real or personal, tangible or intangible, which thereby is obtained, directly or indirectly.

(F) Any property, real or personal, which represents or is traceable to the gross proceeds obtained, directly or indirectly, from a violation of—

(i) section 511 (altering or removing motor vehicle identification numbers);

(ii) section 553 (importing or exporting stolen motor vehicles);

(iii) section 2119 (armed robbery of automobiles);

(iv) section 2312 (transporting stolen motor vehicles in interstate commerce); or

(v) section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce).

(2) No property shall be forfeited under this section to the extent of the interest of an owner or lienholder by reason of any act or omission established by that owner or lienholder to have been committed without the knowledge of that owner or lienholder.

(b)(1) Any property—

(A) subject to forfeiture to the United States under subparagraph (A) or (B) of subsection (a)(1) of this section—

(i) may be seized by the Attorney General; or

(ii) in the case of property involved in a violation of section 5313(a) or 5324 of title 31, United States Code, or section 1956 or 1957 of this title investigated by the Secretary of the Treasury or the United States Postal Service, may be seized by the Secretary of the Treasury or the Postal Service; and

(B) subject to forfeiture to the United States under subparagraph (C) of subsection (a)(1) of this section may be seized by the Attorney General, the Secretary of the Treasury, or the Postal Service.

(2) Property shall be seized under paragraph (1) of this subsection upon process issued pursuant to the Supplemental Rules for certain Admiralty and Maritime Claims by any district

court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

(A) the seizure is pursuant to a lawful arrest or search; or

(B) the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, has obtained a warrant for such seizure pursuant to the Federal Rules of Criminal Procedure, in which event proceedings under subsection (d) of this section shall be instituted promptly.

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under this subsection, the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, may—

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) For purposes of this section, the provisions of the customs laws relating to the seizure,

summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be. The Attorney General shall have sole responsibility for disposing of petitions for remission or mitigation with respect to property involved in a judicial forfeiture proceeding.

(e) Notwithstanding any other provision of the law, except section 3 of the Anti Drug Abuse Act of 1986, the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine—

(1) to any other Federal agency;

(2) to any State or local law enforcement agency which participated directly in any

of the acts which led to the seizure or forfeiture of the property;

(3) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency—

(A) to reimburse the agency for payments to claimants or creditors of the institution; and

(B) to reimburse the insurance fund of the agency for losses suffered by the fund as a result of the receivership or liquidation;

(4) in the case of property referred to in subsection (a)(1)(C), upon the order of the appropriate Federal financial institution regulatory agency, to the financial institution as restitution, with the value of the property so transferred to be set off against any amount later recovered by the financial institution as compensatory damages in any State or Federal proceeding;

(5) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency, to the extent of the agency's contribution of resources to, or expenses involved in, the seizure and forfeiture, and the investigation leading directly to the seizure and forfeiture, of such property;

(6) in the case of property referred to in subsection (a)(1)(C), restore forfeited property to any victim of an offense described in subsection (a)(1)(C); or

(7) In the case of property referred to in subsection (a)(1)(D), to the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or any other Federal financial institution regulatory agency (as defined in section 8(e)(7)(D) of the Federal Deposit Insurance Act).

The Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General, the Secretary of the Treasury, or the Postal Service pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General, the Secretary of the Treasury, or the Postal Service may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State

or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials. The United States shall not be liable in any action arising out of a transfer under paragraph (3), (4), or (5) of this subsection.

(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(g) The filing of an indictment or information alleging a violation of law, Federal, State, or local, which is also related to a forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the forfeiture proceeding.

(h) In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

(i)(1) Whenever property is civilly or criminally forfeited under this chapter, the Attorney General or the Secretary of the Treasury, as the case may be, may transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer—

(A) has been agreed to by the Secretary of State;

(B) is authorized in an international agreement between the United States and the foreign country; and

(C) is made to a country which, if applicable, has been certified under section 490(a)(1) of the Foreign Assistance Act of 1961.

A decision by the Attorney General or the Secretary of the Treasury pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subsection, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General or the Secretary of the Treasury may, in his discretion, set.

(2) The provisions of this section shall not be construed as limiting or superseding any other

authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including property which is sought as evidence of a crime committed in the foreign country.

(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable

presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

(j) For purposes of this section—

(1) the term "Attorney General" means the Attorney General or his delegate; and

(2) the term "Secretary of the Treasury" means the Secretary of the Treasury or his delegate.

Section 1956 of Title 18, United States Code, provides:

Laundering of monetary instruments

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than not more than [1] $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendants believed such representations to be true.

(3) Whoever, with the intent—

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term "represented" means any

representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3) or (a)(3)[1], or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

(1) the value of the property, funds, or monetary instruments involved in the transaction; or

(2) $10,000.

(c) As used in this section—

(1) the term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term "conducts" includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between ac-

counts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term "financial transaction" means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term "monetary instruments" means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term "financial institution" has the definition given that term in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder;

(7) the term "specified unlawful activity" means—

(A) any act or activity constituting an offense listed in section 1961(1) of

this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving—

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purpose of the Controlled Substances Act);

(ii) kidnapping, robbery, or extortion; or

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978))[1];

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

(D) an offense under section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 542 (re-

lating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 875 (relating to interstate communications), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to fraudulent Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1201 (relating to kidnapping), section 1203 (relating to hostage taking), section 1708 (theft from the mail), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2319 (relating to copyright infringement), or section 2320 (relating to trafficking in counterfeit goods and

services) of this title, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food Stamp Act of 1977 (relating to food stamp fraud) involving a quantity of coupons having a value of not less than $5,000, or any felony violation of the Foreign Corrupt Practices Act; or

(E) a felony violation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et seq.).

(8) the term "State" includes a State of the United States, the District of Columbia,

and any commonwealth, territory, or possession of the United States.

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.

(g) Notice of conviction of financial institutions.—If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of this title, or section 5322 or 5324 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

(h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

Section 841 of Title 21, United States Code, provides:

Prohibited acts A

Unlawful acts

(a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

Penalties

(b) Except as otherwise provided in section 859, 860, or 861 of this title, any person who

violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving—

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 50 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

(viii) 100 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 1 kilogram or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of

such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 849, 859, 860, or 861 of this title after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. Any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B) In the case of a violation of subsection (a) of this section involving—

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (1) through (III);

(iii) 5 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl propanamide;

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount

of marihuana, or 100 or more marihuana plants regardless of weight; or

(viii) 10 grams of methamphetamine, its salts, isomers, and salts of its isomers or 100 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and

shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(C) In the case of a controlled substance in schedule I or II except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $2,000,000 if the defendant is an individual or $10,000,00 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a

term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(D) In the case of less than 5 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil or in the case of any controlled substance in schedule III, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such a person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a

term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 3 years, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 6 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this pargraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised re-

lease of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $100,000 if the defendant is an individual or $250,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more convictions of him for an offense punishable under this paragraph, or for a crime under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $200,000 if the defendant is an individual or $500,000 if the defendant is other than an individual, or both.

(4) Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in section 844 of this title and section 3607 of Title 18.

(5) Any person who violates subsection (a) of this section by cultivating a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed—

(A) the amount authorized in accordance with this section;

(B) the amount authorized in accordance with the provisions of Title 18;

(C) $500,000 if the defendant is an individual; or

(D) $1,000,000 if the defendant is other than an individual;

or both.

(6) Any person who violates subsection (a) of this section, or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use—

(A) creates a serious hazard to humans, wildlife, or domestic animals,

(B) degrades or harms the environment or natural resources, or

(C) pollutes an aquifer, spring, stream, river, or body of water,

shall be fined in accordance with Title 18, or imprisoned not more than five years, or both.

(c) Repealed. Pub.L. 98-473, Title II, § 224 (a)(), Oct. 12, 1984, 98 Stat. 2030.

Offenses involving listed chemicals

(d) Any person who knowingly or intentionally—

(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this subchapter;

(2) possesses or distributes a listed chemical knowing, or having reasonable cause to believe,

that the listed chemical will be used to manufacture a controlled substance except as authorized by this title; or

(3) with the intent of causing the evasion of the record-keeping or reporting requirements of section 830 of this title, or the regulations issued under that section, receives or distributes a reportable amount of any listed chemical in units small enough so that the making of records or filing of reports under that section is not required;

shall be fined in accordance with Title 18, or imprisoned not more than 10 years, or both.

Boobytraps on Federal property; penalties; definitions

(e)(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years and shall be fined not more than $10,000.

(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years and shall be fined not more than $20,000.

(3) For the purposes of this subsection, the term "boobytrap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.

Ten-year injunction as additional penalty

(f) In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, or importation of a listed chemical may be enjoined from engaging in any regulated transaction involving a listed chemical for not more than ten years.

Wrongful distribution or possession of listed chemicals

(g)(1) Whoever knowingly distributes a listed chemical in violation of this subchapter (other than in violation of a recordkeeping or reporting requirement of section 830 of this title) shall be fined under Title 18, or imprisoned not more than 5 years, or both.

(2) Whoever possesses any listed chemical, with knowledge that the recordkeeping or reporting requirements of section 830 of this title have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be fined under Title 18, or imprisoned not more than one year, or both.

Section 846 of Title 21, United States Code, provides:

Attempt and conspiracy

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

Section 881 of Title 21, United States Code, provides:

Forfeitures

Subject property

(a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this subchapter.

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing delivering, importing, or exporting any controlled substance in violation of this subchapter.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1), (2), or (9).

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1), (2), or (9), except that—

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this subchapter or subchapter II of this chapter;

(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State; and

(C) no conveyance shall be forfeited under this paragraph to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge, consent, or willful blindness of the owner.

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subchapter.

(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(7) All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(8) All controlled substances which have been possessed in violation of this subchapter.

(9) All listed chemicals, all drug manufacturing equipment, all tableting machines, all encapsulating machines, and all gelatin capsules, which have been imported, exported, manufactured, possessed, distributed, or intended to be distributed, imported, or exported, in violation of a felony provision of this subchapter or subchapter II of this chapter.

(10) Any drug paraphernalia (as defined in section 857 of this title).

(11) Any firearm (as defined in section 921 of Title 18) used or intended to be used to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2) and any proceeds traceable to such property.

Seizure pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims; issuance of warrant authorizing seizure

(b) Any property subject to civil forfeiture to the United States under this subchapter may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the United States in a criminal injunction or forfeiture proceeding under this subchapter;

(3) the Attorney General has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the Attorney General has probable cause to believe that the property is subject to civil forfeiture under this subchapter.

In the event of seizure pursuant to paragraph (3) or (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly.

The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.

Custody of Attorney General

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this subchapter, the Attorney General may—

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

Other laws and proceedings applicable

(d) The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any of the provisions of this subchapter, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this subchapter by such officers, agents, or other persons as may be authorized or designated for

that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

Disposition of forfeited property

(e)(1) Whenever property is civilly or criminally forfeited under this subchapter the Attorney General may—

(A) retain the property for official use or, in the manner provided with respect to transfers under section 1616a of Title 19, transfer the property to any Federal agency or to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property;

(B) except as provided in paragraph (4), sell, by public sale or any other commercially feasible means, any forfeited property which is not required to be destroyed by law and which is not harmful to the public;

(C) require that the General Services Administration take custody of the property and dispose of it in accordance with law;

(D) forward it to the Drug Enforcement Administration for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General); or

(E) transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer—

(i) has been agreed to by the Secretary of State;

(ii) is authorized in an international agreement between the United States and the foreign country; and

(iii) is made to a country which, if applicable, has been certified under section 2291(j)(b) of Title 22.

(2)(A) The proceeds from any sale under subparagraph (B) of paragraph (1) and any moneys forfeited under this subchapter shall be used to pay—

(i) all property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs; and

(ii) awards of up to $100,000 to any individual who provides original information which leads to the arrest and conviction of a person who kills or kidnaps a Federal drug law enforcement agent.

Any award paid for information concerning the killing or kidnapping of a Federal drug law enforcement agent, as provided in clause (ii), shall be paid at the discretion of the Attorney General.

(B) The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of Title 28, any amounts of such moneys and proceeds remaining after payment of the expenses provided in subparagraph (A) except that, with respect to forfeitures conducted by the Postal Service, the Postal Service shall deposit in the Postal Service Fund, under section 2003(b)(7) of Title 39, such moneys and proceeds.

(3) The Attorney General shall assure that any property transferred to a State or local law enforcement agency under paragraph (1)(A)—

(A) has a value that bears a reasonable relationship to the degree of direct participation of the State or local agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based; and

(B) will serve to encourage further cooperation between the recipient State or local agency and Federal law enforcement agencies.

(4)(A) With respect to real property described in subparagraph (B), if the chief executive officer of the State involved submits to the Attorney General a request for purposes of such subparagraph, the authority established in such subparagraph is in lieu of the authority established in paragraph (1)(B).

(B) In the case of property described in paragraph (1)(B) that is civilly or criminally forfeited under this subchapter, if the property is real property that is appropriate for use as a public area reserved for recreational or historic purposes or for the preservation of natural conditions, the Attorney General, upon the request of the chief executive officer of the State in which the property is located, may transfer title to the property to the State, either without charge or for a nominal charge, through a legal instrument providing that—

(i) such use will be the principal use of the property; and

(ii) title to the property reverts to the United States in the event that the property is used otherwise.

Forfeiture and destruction of schedule I or II substances

(f)(1) All controlled substances in schedule I or II that are possessed, transferred, sold, or offered for sale in violation of the provisions of this subchapter; all dangerous, toxic, or hazardous raw materials or products subject to forfeiture under subsection (a)(2) of this section; and any equipment or container subject to forfeiture under subsection (a)(2) or (3) of this section which cannot be separated safely from such raw materials or products shall be deemed contraband and seized and summarily forfeited to the United States. Similarly, all substances in schedule I or II, which are seized or come into the possession of the United States, the owners of which are unknown, shall be deemed contraband and summarily forfeitable to the United States.

(2) The Attorney General may direct the destruction of all controlled substances in schedule I or II seized for violation of this subchapter; all dangerous toxic, or hazardous raw materials or products subject to forfeiture under subsection (a)(2) of this section; and any equipment or container subject to forfeiture under subsection (a)(2) or (3) of this section which cannot be separated safely from such raw materials or products under such circumstances as the Attorney General may deem necessary.

Plants

(g)(1) All species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this subchapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the United States.

(2) The failure, upon demand by the Attorney General or his duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture.

(3) The Attorney General, or his duly authorized agent, shall have authority to enter upon any lands, or into any dwelling pursuant to a search warrant, to cut, harvest, carry off, or destroy such plants.

Vesting of title in United States

(h) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

Stay of civil forfeiture proceedings

(i) The filing of an indictment or information alleging a violation of this subchapter or subchapter II of this chapter, or a violation of State or local law that could have been charged under this subchapter or subchapter II of this chapter, which is also related to a civil forfeiture proceeding under this section shall,

upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

Venue

(j) In addition to the venue provided for in section 1395 of Title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

Agreement between Attorney General and Postal Service for performance of functions

(*l*) The functions of the Attorney General under this section shall be carried out by the Postal Service pursuant to such agreement as may be entered into between the Attorney General and the Postal Service.

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